Mr. Jaureguy: Well, if they are increasing like lawyers are there would be many more than that.

The Court: They are increasing, but not as fast as some people think they should. I read where a Harvard economist said there should be 400,000 doctors instead of the one hundred seventy-five or eighty thousand.

A. I think there has been an increase since the low point in the war when there couldn't have been more than about 1100 in the state at that time to 1600 plus at the present time, which includes returned veterans, of course, plus new graduates, plus doctors moving from elsewhere.

Mr. Jaureguy:

Q. That 1600 plus, that was 1948, as I recall? A. Well, you may be right. I was thinking of some figure that came to my attention last year, but it might have been '48.

The Court: How many lawyers do we have in this state? We might as well have that in the record. You know that from your Bar Association connections.

Mr. Jaureguy: I had the figure the other day, but I can't tell you exactly, but it is about 2000 or 2100 who are admitted to practice law. I think your Honor and Mr. Marcus understand a lot of lawyers are admitted to practice law but are working for banks and things of that kind. That doesn't mean all are practicing law.

2398 The Court: I hope they are all working.

Mr. Jaureguy: Yes.

Mr. Marcus: I would like to say that during the course of the proceedings in this case, and you note I am saying proceedings, there have been various estimates made of the number of doctors and they apparently range from 1500 now to an estimate of 1600.

Mr. Jaureguy: We have the exact number in our answer.

The Court: It's been a long case, Mr. Marcus.

Mr. Jaureguy:

Q. Now, what is the practice of OPS, if any, with respect to requirements of doctors getting authorization for treatment of patients; not only what is in the contracts, but how does it work out in practice? A. The actual practice is that by way of general regulation state-wide cases which will run more than $25 in cost require authorization for the purpose of checking not only the coverage of the individual

from the standpoint of dues payment but also to check the requested service against the contract provisions. I should say that those are the general state-wide provisions. However, OPS does maintain a very considerable degree of local autonomy in that we have a sizable number of pools throughout the state, each with its local or area group of cooperating physicians and each with its local supervisory committee. They have a certain amount of leeway with reference to the enforcement or non-enforcement
2399 of those regulations. Therefore I want to make it clear that when I state what general regulations are I am not necessarily contradicting what someone else may have said with regard to his personal experience in a particular local area.

I personally feel that any service, agency or insurance company, necessarily must check its claims. That is obvious. The intent of that organization in so checking is the real meat of the matter to my way of thinking. OPS at no time checks these things or takes the opportunity of doing so. It does not take that opportunity for the purpose of cutting down to make a proprietary profit, and in my opinion that is the chief point.

Q. Well, does OPS ever try to regulate doctors in the manner in which they will treat patients who are subscribers to OPS? A. No, we don't.

Q. Or once having found there is coverage to require authorization to do any particular kind of treatment? A. As I stated before, we ask for initial case reports, which are also procedural requests you might say, on cases which will run over $25. Therefore when the coverage has been checked and approved automatically the doctor then would be authorized to do the procedure he had in mind for a particular case.

Q. Now, you have testified, as I recall—I will ask you whether OPS goes into a county to sell local contracts without a request from the local doctors, invitation or consent or whatever you might want to call it. A.
2400 Well, what I stated before really applies to that. OPS was set up to be an available organization where requested for local counties or districts, and we have gone into all districts where we have been requested so to do and we have not gone into districts where we were not requested to do so, and that is why that difference occurs.

Q. Why doesn't OPS go into a county without authorization or request? A. Because I think you will find all the way through that the Oregon State Medical Society recognizes the principles of local autonomy on all of its actions, just like the AMA does likewise with reference to the states.

Q. Now, from a business standpoint do you think it would be worth-while for OPS to go into a county and compete with, say, the Coos Bay Hospital Association or any of those local plans? A. Well, now, by that do you mean to go in and intensively attempt to get local contracts, is that what you mean?

Q. That is right. A. Well, purely from a businessman's standpoint I would think not. It costs anybody doing work of this kind quite a bit in overhead to maintain field representatives who explain your contract offerings to groups, hold meetings with them, and so forth, and sign them up, and who also do service work of various kinds involved, some claims work, and all of that. It costs money to do that and unless one were to feel that a sufficient vol-
2401 ume of that kind of work was available in some area you would be spending quite a bit to get a very small amount it seems to me.

Q. And as far as the patients were concerned it would just be going back to the same doctors they had before? A. Yes, it would be the same doctors anyway.

Q. And if it was a local pool it would just mean an exact duplication of what they already had? A. Very largely, yes.

Q. Now, do you attend the meetings of the Directors and Trustees of OPS? A. Yes, I think I have attended all of them excepting one when I was away on a trip east.

The Court: Who determines what doctors are eligible to associate with you and become a cooperating physician?

A. There is the one requirement that a physician be a member of or eligible to membership in the Oregon State Medical Society and/or any component county medical society in the State.

The Court: What do you mean "and/or"?

A. I mean "and/or" because—

The Court: Do you mean, to break it down, that he is eligible to become a cooperating physician if he belongs to

a county medical society or is eligible to belong to a county medical society, and that alone?

2402 A. That is right, sir.

Mr. Jaureguy:

Q. Well, do you know whether there are doctors members of county societies who are not members of the State Society? A. Well, I haven't looked over the records of the State Society in that regard, but I am certain that in times past that has been true.

The Court: Is that possible?

Mr. Jaureguy: Yes, that is possible.

Mr. Coughlin: Quite a few of them.

Mr. Jaureguy: We will later have a little evidence on that and explain that.

The Court: But it is not possible to belong to the State Medical Society without belonging to a county?

Mr. Jaureguy: I think that is correct, your Honor, except in an honorary capacity or something of that kind.

Q. At these meetings of the Trustees and the Board of Directors of the OPS has there ever been any proposal made that they endeavor to induce doctors not to take tickets of commercial hospital associations? A. Absolutely not.

Q. And these meetings of the Directors, they take place about how often? A. Ordinarily—of the Directors, you say?

Q. Yes, Directors. A. Ordinarily once a month
2403 unless some special reason would require a special meeting.

Q. And you have been attending those meetings ever since 1942? A. Yes. The first meeting was in January, 1942 and I have been going ever since, with one exception which I mentioned before.

Q. Or at any of those meetings has there been any proposal that they would desire to have OPS a monopoly in the field of prepaid medical care? A. No, there definitely has not been. I wish to qualify that slightly in this respect in that I have heard individual doctors express almost any opinion that you could mention.

Q. Now, you are talking about Directors and Trustees? A. Yes. I have heard one or two of them express that, yes, as a personal opinion.

Q. And is that recently or how long ago? A. Oh, I haven't heard that for about four or five years.

Q. And have there been expressions of opinion to the contrary in the last four or five years? A. Oh, very definitely.

The Court: Recess.

(Short recess.)

2404 Q. Have you had occasion to attend meetings or conferences throughout the state, meetings or conferences of county medical societies? A. Yes, many times.

Q. What would be the occasion for that, generally? A. In the first instance—this is back, but mostly from 1942 up until 1945 or 1946—all of these county groups of physicians knew, of course, that the facilities of OPS would be available for utilization in their areas, if it was so desired, and, consequently, we received numerous requests from those groups to appear before them and to explain what OPS is, what it is trying to do, how it operates and so forth, and, frequently, these groups would decide whether they did or did not wish to have the facilities of OPS operate in their area.

Since that time we have had numerous requests—well, most instances we have more or less an open invitation to sit in on practically any medical society meeting in the state, whenever it is convenient.

After all, the doctors constitute the more important service element in our entire plan and, naturally, we desire to know them and keep on a friendly basis, and to answer their questions, either in a group or individually, and we do not have any regular program of doing that, but we frequently do sit in on county medical society meetings as well as occasionally on State Society meetings.

2405 Q. At any of these meetings you have attended has there been any proposal ever made to the doctors that there should be an attempt made to prevent doctors from taking tickets? A. Not to my knowledge.

Q. Do you give any instructions to your solicitors, those who go out and get business or those who go out and contact doctors, in that regard? A. I don't quite understand what you mean.

Q. Whether you give any instructions to them that they should try to endeavor to get the doctors not to take

tickets? A. Oh, no. Well, I would not—even if that were so, which it is not, even then it would not be the prerogative of the solicitor.

Q. Have you made any effort yourself, either individually or through your organization, to endeavor to persuade doctors not to take tickets of commercial hospital associations? A. Absolutely not. As a matter of fact, as I have stated before, on numerous occasions I have heard physicians individually, or maybe one or two together, something of the kind, express opinions along such lines, and I am sure that I can very honestly state that I have expressed in return an opinion that such would be a very foolish thing. I personally am very much against any type of monopolistic practice. I am also against coercion—always have been.

Q. Coming back to the matter of doctors who are
2406 eligible to become OPS cooperating physicians, do you know Dr. Ullman? A. Oh, I have known in the past who he is. I am not sure that I would know him if he walked in this room. I might.

Q. Do you remember a conversation you had with him some time ago, after he got back from the Army, about the OPS? Did he come up to your office to see you? A. Yes, I believe he did at one time.

Q. At that time did you tell him he could not be a cooperating physician of OPS because he was connected with Permanente? A. No, I didn't.

Q. What was your conversation, do you recall? A. The conversation I had with him, as I recall it, was exactly the same kind of conversation I had with quite a number of other physicians at various times, which is very simple.

I state to a physician who is interested in membership in OPS that he should clarify his position as being a member of or eligible to membership in the Oregon State Medical Society and/or any component county medical society in the state, and frequently any such doctor naturally has gone, in this area at least, to the office of the State and County Medical Societies here in Portland. In other localities the usual procedure is for such a doctor to contact the secretary of the local medical society to find out what his status is.

Q. And whether he is eligible to membership? A. That is right.

2407 Q. Do any of the doctors that do work for OPS, other than rendering service to patients, such as the members of the Board of Directors or members of the

Board of Trustees or any other doctors who possibly work on committees, do they get any salary or compensation for those services? A. No. Our arrangement always has been for each doctor or each member of the Board of Directors or Board of Trustees on called meetings, which you remember will bring doctors generally into Portland from many sections of the state, as far away as Ontario or Medford or Klamath Falls or what not—he gets ten dollars for attending the meeting and he gets mileage at 20 cents a mile one way from his place of normal residence to the place where the meeting is held, and that is all.

Q. The $10 is a per diem for his expenses, is that it? A. No, he gets $10 plus 20 cents per mile, and that is all.

Q. Well, the $10, is that intended to cover expenses other than his mileage, or what is that? A. That is the meeting fee which has simply stayed at that level, and which, I think you will agree, is quite nominal.

The Court: He gets $10 a day plus mileage?

A. He just gets $10, not any more than that. That is all.

Mr. Jaureguy:

Q. If it takes two or three days, he gets $10? A. That is right.

Q. And he buys his meals?

2408 The Court: So all he gets is $10 plus mileage?

A. That is right, yes.

Mr. Jaureguy:

Q. Do some of these meetings take more than one day, sometimes? A. Yes. We had meetings in Eugene last fall and the Directors were required to be there for three days and they met I think at least three different sessions during that period and they just received $10 for the whole affair.

Q. Each? A. Each.

Q. Has OPS ever lost contracts to commercial hospital associations, contracts that OPS had that later went to the commercial hospitals associations? A. Yes, we have.

Q. I do not like to have you tell us about your failures, but has that been quite a few or just on rare occasions? A. Oh, I don't know the exact number. I suppose over the period of approximately seven and a half years during which we have been operating—I have not checked the records on

this point; frankly, this is an estimate—we have lost in that manner somewhere between 20 and 30, I would say.

Q. When you go out and try to get a contract involving the employes of an operation, whom do you generally deal with, the employes or the employer or a union or with whom? A. Those contracts are generally not limited
2409 to any one segment. The method of making contracts naturally depends very largely upon the type of group you are attempting to contact. The matter of whether the employes do or do not have an organization of their own, such as a union, naturally has a very great bearing. We make an effort ordinarily to contact the employer first.

The Court: How long are your contracts for?

A. One year, sir.

The Court: How many members do you have now?

A. About the last count was about 123,000.

The Court: How rapidly have you been increasing, say, in the last year?

A. This last year has been an unusual year, sir, because of this suit.

The Court: Well, has it been good or bad?

A. Bad.

The Court: Have you increased during the last year?

A. Yes, we have increased some but at less than—well, at about one-third of the rate we did the preceding year.

The Court: How fast is that in numbers?

A. The preceding year we increased about 30 per cent and this last year not to exceed 10 per cent.

The Court: When I interrupted, you were saying you usually contacted the employers. Now go ahead.

A. Yes.

Mr. Jaureguy:

Q. When did you pass the 100,000 mark? A.
2410 When did we pass the 100,000 mark?

Q. It seems to me that I saw the sign up someplace that you had passed the 100,000 mark. A. Oh, I don't remember the exact date. I think it was sometime last year,

though. The major portion of that growth at that point, though, was during the preceding two years.

The Court: Are you going to have data here in the exhibits that will show the history and membership increase since its organization?

Mr. Jaureguy: We do not have so far anything of that nature except their income from the reports to the Insurance Commissioner. Of course, those do not cover 1949.

Q. I don't know as you completed your recital of the methods you used to get contracts and whom you contacted? A. Ordinarily, as I said before, we make a practice of contacting the employer first, and generally from the employer we will get a statement that we should take the matter up with his employes.

If a union is involved, generally, then, we will talk to the union, both at a general meeting and sometimes a committee which the union has for the purpose of considering such matters; sometimes with the officers of the union or with the business agent.

If no union is involved, frequently the employer will call a meeting of his employes right in his own establishment for the purpose of having us explain what the service
2411 involves and what the costs are and so forth.

The Court: What percentage of your contracts are group industrial contracts, working people?

A. Do you mean to limit that by "industrial" in the sense of men working in a sawmill and so on, or do you mean group contracts?

The Court: All right.

A. The percentage of our group—let's see; about 75 per cent is of that type.

The Court: The rest are what you call individual family coverage contracts?

A. That is right, and that is very new, compared to the other.

The Court: When did that begin?

A. The first time I think was in the latter part of 1946.

The Court: Now, then, what percentage is industrial, sawmills and the like?

A. Of the three-fourths?

The Court: Yes, any way you want to put it.

A. Well, I would say 35 or 40 per cent.

The Court: Of the total?

A. Of the total business, yes, is in that category.

The Court: I suppose your group members in industry would be a pretty large figure now, wouldn't it?

A. Oh, yes. It would for this state, yes.

Mr. Jaureguy:

Q. Do you have any with as many as a thousand?

2412 A. Yes, we do; not very many, though.

Q. The rest of these group contracts, non-industrial—have you written any of the types of business that commercial hospital associations were unwilling to handle?

Mr. Marcus: I object to that, your Honor. There is nothing in the record that shows the commercial hospital associations were unwilling to handle any of those contracts.

Mr. Jaureguy: We are going to go into it.

The Court: Answer, if you can.

A. Well, of course, in answering that question there is a matter of opinion involved there.

Mr. Marcus: I move to strike that out, your Honor.

The Court: Denied. He is an expert.

A. I have been in this business pretty near twenty years and know most of what goes on.

I would say that, by and large, for many years commercial hospital associations have primarily chosen on the industrial type of group contracts for a large percentage of their contracts. Our instructions, however, have been somewhat different, in that the medical profession has felt that they wished to widen the scope of these offerings to other classes of people.

Mr. Marcus: I object, again, your Honor. He is testifying now to what the medical profession has in mind,

2413 and he is not a doctor.

The Court: He is an expert in this field. Go ahead and tell your story.

A. We have been instructed to make offerings of this type available to a much larger segment of the population than

what had been done prior to the entering of this type of organization in the field, and I believe that a careful analysis of the figures will prove that statement.

Mr. Jaureguy:

Q. Are some groups more profitable for this type of contract than others? A. Ordinarily, industrial groups would be more profitable, if one were running a profit organization. There are exceptions to that, however, and some very notable exceptions. You also can find examples of non-industrial groups which have a better-than-average experience.

The Court: Don't you have a lot of trouble with delinquencies under your family type contracts?

A. We have a certain amount, sir. I don't know right offhand the percentage of delinquencies of individuals. It is necessary for the people to pay just like they do an insurance premium; that must be paid or otherwise they would be out. I do not have those figures in mind, but we have a definite run of percentage of delinquencies.

The Court: Do you get any or a lot of your business by mail?

A. Yes.

2414 The Court: You get letters from people in the outlying districts, outlying points?

A. Yes.

The Court: Do you take business from any part of the state that is offered? For instance, if you get a letter from, say, down in the southeast, down in Harney County—

A. Yes.

The Court: If somebody says that they want family coverage, a farmer down there, for instance, do you take that business?

A. Yes, sir, we have to.

Mr. Jaureguy:

Q. How about Coos County? Do you have coverage in Coos County? A. We have coverage in Coos County. As I stated before, we have not sent our field representative

into Coos County for the purpose of attempting to write local group contracts, but we do have individual and individual family contracts which arise in that area, yes.

The Court: Are you in every county?

A. Pardon, sir?

The Court: Are you in every county except where you purposely stay away on account of local associations?

A. Well, we have some business in every county, yes.

The Court: Without any exception?

A. There is no exception to that; no, sir. Perhaps you would like to have me explain our system, however.

2415 The Court: All right.

A. We write statewide contracts and sectional contracts which include people in these various local areas that have been mentioned, and that has to do—

Mr. Jaureguy:

Q. That is, you may have an employer in Salem who has employes in Coos County or Klamath County? A. That is correct.

The Court: What do you think is the saturation point or the limit you may attain? You have been in business since 1941, near nine years or eight years. What could you expect to do in the next eight years, do you think?

A. Well, the situation here is different from other parts of the country, but, based on experience elsewhere, there have been some places in this country where as high as 25 to 40 per cent of the population has been covered under existing plans of this type, one or more which happen to be located in such a state.

The Court: When you were giving the number of your members, did you include in that figure all the people in the family?

A. Yes, those are all the subscribers; yes.

The Court: You said 115,000 subscribers. For instance, the Jones family out here with five children, making seven in all, do you include seven in your total number or total figure of 115,000 contracts?

A. No, we don't have that many contracts. I am including in that figure people covered under our group con-
2416 tracts, plus, in many instances, the families of the members included in those group contracts.

The Court: You have counted all the members of the family?

A. That is right.

The Court: How many contracts do you have?

A. We have about 3,000 group contracts.

The Court: How many family contracts?

A. Oh, about—I don't know that figure offhand, the number of actually separate contracts. I would say between 10,000 and 12,000, which you have to multiply by the number of people in the family.

The Court: How does your concern compare with other doctor-owned or doctor-sponsored concerns in other parts of the country, everything being relative, I mean the same relative population that we have to work on and so on?

A. We are at this time a little above the average, percentagewise, of the states in the country.

The Court: Do you know how many there are in other states like this statewide doctor-sponsored group?

A. There are at this time, I think, 62 doctor-sponsored plans.

The Court: There are not that many states.

A. I was just going to say, sir, I would have to count up to find out the number of that 62 which are definitely statewide.

The Court: What do you think, offhand?

2417 A. Of statewide plans, I would say at present there are between 30 and 35.

The Court: Are they popular throughout the country?

A. Yes, quite so. The South has a lesser number than elsewhere in the country.

Mr. Jaureguy:

Q. How many of these statewide plans, if you know, if any, were in force when OPS was organized? Tell us that.

A. Oh, there were quite a few. I know that the California Physicians' Service was organized in 1939; the Michigan Medical Service started in 1939. I would not be able to say how many were in existence at the time. I could find out.

Q. Those were statewide plans? A. Yes. Yes, they were.

Q. Could you give us an idea of the types of contracts that you have entered into pursuant to the directions of the Society which, from the standpoint of the doctors servicing them, are not considered profitable from a dollar-and-cent standpoint? Just what general type? Take school teachers, for instance, as compared with the men in the woods. A. You mean the classifications of people? Is that what you mean?

Q. That is what I should have said, yes. A. Well, we have not limited offerings to any particular class due to their being so-called profitable or non-profitable. As school teachers would be an example of a class of people
2418 which perhaps have not constituted the best possible risks, medically speaking. There have been groups of employes in stores and such people—Is that what you mean?

Q. Yes.

The Court: In the figures you gave a while ago were you including the Blue Cross? Do you classify that as a doctor-sponsored organization?

A. No, I was not.

The Court: What share of business do you have in Oregon as compared to the Blue Cross? Do they have as many members or more members than you have?

A. No, they do not have as many. Moneywise, at this time, they have about 35 to 40 per cent. The rest of the business is OPS. Subscriberwise, they have about two-thirds as many subscribers as we do.

The Court: Members, you mean?

A. Yes.

Mr. Jaureguy:

Q. I suppose that is because a lot of Blue Cross policies are merely for hospital service? A. That is correct. That is right.

The Court: You do not offer separate contracts, one for hospitalization, and one for medical coverage?

A. We have a contract which has been available for family coverage which has been utilized very little,—I think we only have two or three such contracts in existence—
2419 which would be for hospital only. Even though we have had that one, it does not seem to be what the people want.

The Court: Do you have a contract which offers medical care alone?

A. No, sir, we do not.

The Court: Your contract offers medical care and hospitalization?

A. That is right.

The Court: Is there any reason for that, particularly?

A. Oh, not too much reason, sir. It is because of the historical background of this type of coverage in the Pacific Northwest, which is different from anywhere else in the country.

The Court: What is different about it?

A. It is different in this respect: In Oregon, Washington and Idaho I think this is true, that all organizations, whether they be commercial or so-called doctor-owned or what not, the history has been that they have written so-called full-coverage type of service. That goes away back. That still continues to a very sizable degree. That is not true anywhere else in the country, except in one or two local minor instances.

The Court: In other words, the others, doctor-owned—let us take the California Physicians' Service. Do they have or offer singly a medical contract?

A. Yes, you can get one in some areas. That is not a statewide proposition, though.

2420 The Court: In other places do the doctor-sponsored concerns offer separately medical contracts? Do they?

A. In most parts of the country—I can recall it possibly by states, your Honor. In most parts of the country, medically sponsored medical service plans limit their offerings to medical service, and the Blue Cross or other similar hospital organizations offer a companion hospital contract with it.

Mr. Jaureguy:

Q. What about drugs? Does your contract cover drugs or prescriptions? A. Our group contracts provide for drugs for hospitalized cases, including prescriptions. We also privide serums and vaccines in epidemic situations. We do not, however, provide prescriptions for ordinary cases, which do not involve hospitalization.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. I believe you said OPS has an office in Salem and Portland, is that right? A. That is right.

Q. Does it have any other offices in Oregon? A. Yes. We have had an office, a small one, at Medford since the latter part of 1942. We are in the process of opening up at this time a small office in Pendleton.

2421 Q. Mr. Marshall, I believe you mentioned you had quite a number of employes. I want to ask you if you can identify a sales representative of yours by the name of Montgomery? A. Yes, I can.

Q. Can you give us his full name? A. George.

Q. During what period was he employed by or an employe of OPS? A. He has been an employe of OPS throught its entire existence.

Q. I will ask you a similar question with respect to a man by the name of Jackson. A. Ralph Jackson?

Q. Was there a Jackson in the office of OPS at some time? A. The only party by the name of Jackson who has been associated with OPS at any time, I believe, is Ralph Jackson who was associated with OPS from July 1 of 1942 until May 1 of 1944, who at that time was Portland Division Manager for OPS.

Q. Who is the Assistant Manager of OPS? A. At this time?

Q. Yes. A. Mr. Joseph Harvey, Jr.

Q. How long has he been Assistant Manager? A. He has held the title of Assistant Manager for around two years, but actually he has acted in that capacity for somewhere in the neighborhood of four years, maybe a little more.

Q. Mr. Marshall, what salary do you receive from OPS?

Mr. Jaureguy: I object to that as incompetent, ir-
2422 relevant and immaterial.

The Court: He may answer.

A. I have a base salary at this time of—let's wait. I have to stop and think. $862.50.

Q. For what period is that? A. What period?

Q. Yes, is that per month? A. Yes, per month, and we have a cost of living bonus which goes up and down, according to the index, on top of that, on top of every salary in the organization. That stands at 26 per cent at this point.

Q. What was your income for last year from OPS? A. About $13,000.

Mr. Marcus:

Q. You have testified back in the early '30s you and some doctors had a meeting with Mr. Kirk of the Industrial, I believe in Salem, and at that time you broached the subject of Industrial opening up its panel in that area, is that right? A. That is correct.

Q. Was that after the formation of the Physicians' and Surgeons' Hospital Association in Salem? A. Yes, it was.

Q. So, at that time you were trying to encourage a competitor, is that right? A. I would have to answer
2423 that in this way: I would say the main reason why the Physicians' & Surgeons' Hospital Association was formed in the first place was because the number of physicians who were on the so-called panel of the other organizations was so limited as to leave a very large percentage of the physicians located there out of the picture, and that is the main reason for starting the P. & S. They felt, very frankly, that having their own organization in the picture,—in other words, a finger in the pie,—would be helpful in getting these other organizations to open up. They used it in that way at that time.

Q. Well, then, your answer to my question was "Yes," they wanted to encourage Industrial, the Industrial Hospital Association? A. Yes, that is right.

Q. But Industrial would not accept that suggestion? A. Mr. Kirk refused to accept that.

Q. Mr. Marshall, you have stated that subsequently you and some doctors met Mr. Bechtold of National and brought up the same topic, is that right? A. That was a very casual sort of meeting. It was not premeditated; nobody knew that we were going to bump into Mr. Bechtold, but several of us did, because he was at the legislative session that year, and, as I recall, it was right after dinner. There were about four doctors and Mr. Bechtold and I who wandered into our office down there and had a very informal discus-

sion. It was not called for that hour or anything.

2424 Q. Who were those doctors? A. One was Dr. S. K. Power; another was Dr. H. J. Clements, who has since passed away; another was Dr. Edgar S. Fortner. I am not able to remember who the fourth was; I don't recall that.

Q. There were four of them? A. I think there were four. I won't guarantee that.

Q. Mr. Marshall, I believe in response to a question from the Court you indicated that there was a limitation on the number of shares of stock a physician could hold in OPS? A. That is correct.

Q. That limitation is not one share? A. It works this way: In communities of a thousand or more people a cooperating physician has been asked to buy two shares of stock at $25 each, which makes $50.

In rural areas and communities of less than a thousand the cooperating doctor has been asked to buy only one share, which would then be only $25.

Q. What happens to those moneys? Do they go into the capital? A. The capital, yes.

Q. I believe you said in response to a question by Mr. Jaureguy, as to cutting down on bills, that you never cut down to make a pecuniary profit, is that right? A. That is correct, yes.

Q. There is no question that where you think it

2425 should be cut down you cut it down in order to keep from making a loss, isn't that so? A. That is not so, because of the fact that we have, on numerous occasions, been unable to pay the full fee schedule of physicians in their own areas. Very definitely bills have not been cut down with that idea in mind.

Q. It might be because of inefficient handling? A. Yes, it could be.

Q. You are familiar with the fact, are you not, that OPS at times has admonished doctors to be careful about piling up expenses in their medical treatment, because it is their organization? A. We have made numerous efforts, of course, to explain the full workings of a plan of this type to the cooperating physicians. As far as at any time telling them to cut down on this or that, we have not done that. We have asked them to cut out completely unnecessary things, yes, that is true.

Q. Again, in response to a question by Mr. Jaureguy, you said that you considered or that OPS considered it uneconomical to go into some of the local autonomy areas. Isn't it

true you could expect, if you went down there, that the doctors who had their own local organization would not cooperate with your organization, and in that way it would be uneconomical for you to go in there, isn't that so? A. No, that is not so. Upwards of 95 per cent of the physi-
2426 cians who happened to be members of those local organizations of which you speak also have signed cooperating agreements with OPS, and there is nothing connected with any of those agreements which would limit us from writing any contract we wished to in those areas, if we so chose.

Q. You said at the Directors' meetings of OPS there was never passed any resolution for OPS to have a monopoly. But you also said, I think, that some of the doctors presented their own opinions to the effect they would like to see a monopoly. Could you give us the names of some of those members? A. I was talking about doctors in general. I never heard but one member of the Board of Directors ever express a personal opinion like that. The others have been exactly the opposite.

Q. What member of the Board of Directors was that? A. Am I required to answer that, your Honor? Dr. Gordon Leitch.

Q. Now, with respect to this conversation you had with Dr. Ullman, as I gather from what you have said when doctors returned from the war it was fairly common for you to make a sort of a set speech or give them a routine matter of information when they came back, isn't that so? A. That is largely true, yes.

Q. That is your recollection of what you said to Dr. Ullman, is that so? A. I believe that is what I have personally said to any doctor who has applied for membership,
2427 whether he was returning from war, whether he was a returning veteran or otherwise.

Q. In other words, you have no distinct recollection of a particular conversation with Dr. Ullman, but you feel by virtue of your custom that you must have had this sort of conversation with him, is that right? A. I remember when Dr. Ullman was in my office, and I do recall conversing briefly with him. I don't think I could, 100 per cent, guarantee exactly what I said, no. Of course not.

Q. You don't recall a particular conversation with Dr. Ullman; that is, what you said and what he said, but you do recall that it was your custom to take a certain position with doctors as they returned and tell them they had to be elig-

ible with their medical society? A. Have always done that, that is right.

Q. Mr. Marshall, you had something to do, did you not, with negotiations that went on for some time between the Blue Cross and the Multnomah Medical Service Bureau, I think, or OPS, to see whether the doctor-sponsored plan would be confined to medical service and the Northwest Hospital Service Plan would be confined to hospitalization? You had something to do with those negotiations? A. Oh, yes, surely.

Q. I show you Exhibit 1569 and merely ask whether you can identify the approximate time that this document was made? A. Well, I am not absolutely sure as to the
2428 exact date.

Q. It would probably be the latter part of 1942 or early 1943? A. I would think so, probably somewhere in that neighborhood.

(Three photostats consisting of correspondence between OPS and Northwest Hospital Service Plan thereupon marked Plaintiff's Identification No. 2079, No. 2080 and No. 2081.)

Mr. Marcus:

Q. I show you an exhibit marked for identification 2079, 2080 and 2081; and ask you whether they represent correspondence between you and the Northwest Hospital Service Plan with respect to those negotiations? A. The first two do, but this memorandum was not written by me or to me. Well, it was written by Mr. Rubey, who worked for us at that time. It was, apparently. I don't remember this, offhand, but it was in regard to one of these matters. The other two I do remember.

Q. It is true, is it not, that those negotiations fell by the wayside because, or primarily because, of the difficulty of determining how to handle the sales force problem? A. No, that is not true.

Q. I gathered that from reading those documents; but what was the major difficulty there? A. It did not even get that far. Frankly, that could have been the point, I will agree to that; but the main point was the matter of the division of the one-package premium. Right or wrong, it worked out that the hospitalization plan desired a
2429 larger percentage of the total premium to cover hospitalization only than what it was costing OPS to fur-

nish that or greater service directly. That is the prime reason why it broke down.

Q. Mr. Marshall, you have mentioned you visited or contacted a number of other doctor-sponsored plans throughout the state, practically since the time you have been connected with this prepaid medical care field. Is that so? A. Yes, that is correct.

Q. During the period since 1936 was there not some sort of a bureau set up whereby the executives or heads of these doctor-sponsored plans could meet and talk over their common problems? A. Yes, that is correct. We had an informal conference of, primarily, most of the managers of—most of the managers and some of the doctors who were well acquainted with these matters, on an informal basis, and on an informal basis we occasionally did meet as such.

(Thereupon a recess was taken until 2:00 o'clock P. M.)

2430 Afternoon Session

Court reconvened at 2:00 o'clock P. M., pursuant to recess.

Mr. Jaureguy: If your Honor please, we have a doctor here whose testimony will be short and I wonder if we could interrupt Mr. Marshall's examination and put him on.

The Court: Is that satisfactory to you?

Mr. Marcus: Yes.

Mr. Jaureguy: Dr. Gaston.

Dr. Ira E. Gaston was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please, Doctor? A. Ira E. Gaston.

Q. And where do you live? A. Portland.

Q. You have been here how long? A. I have been practicing here about thirty years.

Q. And you are a physician and surgeon? A. Yes.

2431 Q. And where did you get your medical training?

A. I took my undergraduate work at the University

of Oregon Medical School, postgraduate work in Philadelphia and Vienna.

Q. And have been practicing here ever since you started? A. Yes, after I got out of the military service in the First World War.

Q. Are you a member of any medical societies? A. Yes, I guess I belong to several.

Q. Could you just list them for us? A. Well, the Oregon State Medical Association, Multnomah County, Pacific Coast Society of Ophthamology and Laryngology, American Academy of Ophthamology and Laryngology. That is all I think of right now.

Q. Did you name the American Medical Association? A. I don't think I am an active member of the American Medical Association right now. I had a membership some years ago, but I believe it's lapsed. I am not sure of that.

Q. Are you a member of the Oregon State Medical Society? A. Yes.

Q. Have you ever been an officer of any of those societies? A. I was a member of the Council of the Oregon State Medical Society, President of the Oregon Academy of Ophthamology and Laryngology—I guess I forgot to mention that Oregon. I was President of that organization.

Q. And when were you a member of the Council, would you say, of the State Medical Society? A. I don't know the exact date, but I think it was four or five years ago.

2432

Q. For a three-year term? A. Yes.

Q. Have you ever had an office or been a member of the Council of the Multnomah County Medical Society? A. That is the one I am speaking of, Multnomah County—did I say Oregon State?

Q. Yes. A. I am sorry. Multnomah County.

Q. Now, during the course of your practice have you had occasion to treat patients who are members of commercial hospital associations?

Mr. Marcus: Your Honor, I would like to make the same objection to this line of questioning as in the case of Dr. Durno.

The Court: The same ruling. The testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. I asked you if in your practice you have had occasion to treat patients who were members of commercial hospital

associations. A. Yes. I have had a number of patients who have been covered by commercial hospital associations.

Q. Do you know what associations they are, Na-
2433 tional or Industrial or— A. Both National and Industrial I have taken care of.

Q. Do you know what the expression means "taking tickets" as is used by doctors; that is, that you send the bill in to the hospital association and accept the checks? A. Yes.

Q. And what is your practice in that regard? A. Well, my practice is to take care of any patient who comes to me who wants my service, regardless of whether or not he is covered by hospital association or regardless of which hospital association he is covered by.

Q. And you take the tickets? A. Yes.

Q. And send the bills to the hospital association? A. Yes.

Q. And accept their checks? A. Yes.

Q. When you were a member of the Council of the Multnomah County Medical Society was there ever any proposal that there would be an attempt to prevent doctors from doing that? A. No. That discussion never came up at any meetings I attended.

Q Or has anybody, a doctor, medical society, or anybody else, ever suggested to you that you shouldn't take the tickets? A. No.

Mr. Jaureguy: You may take the witness.

2434 Cross Examination

By Mr. Marcus:

Q. Doctor, did you say you were an ophthamologist? A. Yes.

Q. I suppose in your practice you don't have very many patients who are under these hospital associations, do you? A. Well, yes, I think I would say a good many. Quite a number of my old patients are now covered by hospital associations, patients I have taken care of many years ago, and are now covered by hospital associations.

Q. They have more recently become covered by hospital association contracts, is that it? A. Yes.

Q. Now, Doctor, you state you were on the Council of the Multnomah County Medical Society for about three years. A. Yes.

Q. That was during the war period? A. Yes, I think it was.

Q. Well, about what percentage would you say of those meetings did you attend? A. Well, I attended practically 100 per cent. I think I was pretty regular in attendance. I missed one occasionally.

Mr. Marcus: That is all.

2435 Redirect Examination

By Mr. Jaureguy:

Q. Well, while you were a member of the Council were you taking tickets, too? A. Yes.

Q. And before you were a member of the Council? A Yes.

Q. And are you one of the cooperating physicians of OPS? A. Yes.

Q. And in taking care of these patients or rendering bills do you in any way discriminate against patients because they are members of commercial hospital associations? A. No, I try not to.

Mr. Jaureguy: That is all.

Mr. Marcus: That is all.

(Witness excused.)

Mr. Jaureguy: If your Honor please, we have some documentary evidence on two matters that were brought up this morning, and one is on the stationary of the Board of Medical Examiners, the number of doctors who are licensed to practice in Oregon in the years 1948 and 1949, and also the applications for admission, and the total licenses during each of the years '47, '48 and '49, which I would like to put in evidence.

Then I have a chart here in graph form of the con-
2436 tracts and subscribers of OPS, and also a separate one for the family subscribers and all the direct subscribers showing the number from the inception of OPS to the middle of the year 1949, which I would like to put in evidence.

Mr. Marcus: My only question on this document is, was this prepared by the Board of Medical Examiners?

Mr. Jaureguy: Yes.

Mr. Coughlin: I called up the Board and got them to deliver that to me this morning during the court session. It

was the secretary, Executive Secretary, of the Board of Medical Examiners.

The Court: They are admitted.

(Document showing M. D.'s licensed in Oregon in 1947, 1948 and 1949 was thereupon marked Defendants' Exhibit No. 2763, and was received in evidence;

(Chart showing OPS membership was thereupon marked Defendants' Exhibit No. 2764, and was received in evidence.)

Mr. Jaureguy: Mr. Marshall.

WILLARD C. MARSHALL, a witness on behalf of Defendants, was recalled to the stand and testified further as follows:

The Court: Mr. Marshall, there is one thing, and maybe more, that I am not clear about. Now, there are three
2437 self-contained county units I have heard about. One Clackamas County and one is Klamath County and Coos and Curry. Those doctors have their own organization. There may be some others in the State. Those are the three I have heard about here.

A. There is one other, your Honor. Eugene.

The Court: Eugene?

A. Lane County, yes.

The Court: Then there are in various parts of the state what are called OPS pools. Multnomah County is one of them.

A. Yes.

The Court: Now, I take it that means that your Multnomah County doctor members stand or fall with the business that is developed here in Multnomah County?

A. That is right.

The Court: Do they administer that or do you administer that for them?

A. The statewide organization administers all pools.

The Court: All pools?

A. Yes.

The Court: Now, of course, there is the same form of OPS contracts offered in counties where there are pools as where there are not; that has nothing to do with that type of contract?

A. They are all the same.

The Court: Yes. Well, now, do I understand that you also do business, offer your contracts, in the four
2438 counties where the doctors have their own organizations, the four we have just mentioned?

A. To a certain extent we do, yes.

The Court: Just elaborate on that, will you?

A. Principally in two ways of which we have current examples. We write statewide or sectional contracts—I will give you an example. We have a contract with the State Highway Commission here in Oregon. The Commission has employes in every county. We cover some employes of the Commission in every county. There are other examples I could give you, but we do that. Then we, of course, offer our individual family contract in all areas of the state.

The Court: And you have contracts in all four of these counties as well as all other counties?

A. Yes, we do.

The Court: Do you make any difference in the intensity of your solicitation in these four counties as to the rest of the state?

A. On an individual family coverage we have never used the method of personal solicitation. That has been entirely by means of newspaper advertising, radio advertising, the use of streetcar or bus cards in some instances—

The Court: How much money do you spend in advertising a year?

A. For the 1949-50 year our advertising appropria-
2439 tion total amounts to about one-half of one per cent of our income.

The Court: These four doctor-owned concerns, do they have any family contracts?

A. I believe that—of course, this is an evolutionary thing—I believe as of now, I think two of them do; yes, sir.

The Court: Which two do you think?

A. I believe the one in Eugene does and I think the one at Klamath.

The Court: Well, if that is so, then you are into a degree in competition with them in that field.

A. Oh, yes, we would be.

The Court: What doctors are available to your subscribers in those counties?

A. I believe exactly the same doctors who are available to the people subscribing to the local bureaus there, which is practically all.

The Court: Even though those men are not stockholders in your company?

A. They all have cooperating agreements with OPS, and in that respect are the same as any other. They do not own stock; no, sir.

The Court: The four counties, those doctors do not own stock?

A. No, they do not. There may be one or two exceptions, but I mean that is the usual thing.

2440 The Court: All right, Mr. Marcus.

Cross Examination (Resumed)

By Mr. Marcus:

Q. Mr. Marshall, I note for local areas your family coverage and individual contracts are made with the consent of the medical societies down there, isn't that so? A. Yes, that is correct.

The Court: One more question: You don't solicit group contracts, however, in those four counties, other than like your Oregon State Highway Commission?

A. That is correct, yes.

The Court: You wouldn't go into Coos County and solicit one of the big lumber mills?

A. We haven't done so, no.

The Court: Or Weyerhaeuser in Klamath Falls?

A. No, we haven't done so; no.

The Court: Does your contract provide that you shall not?

A. No, there is no agreement.

The Court: You just spoke of a cooperating agreement you had with doctors in those counties.

A. No. I mean by that, your Honor, the regular cooperating agreement we have with any doctor. I mean a doctor in Klamath Falls, for example, or Eugene, has exactly the same cooperating agreement a Portland doctor does or a Salem doctor or a Medford doctor. That is all I was
2441 referring to when I said "cooperating agreement."

The Court: But all the doctors in the State don't have a cooperating agreement with you?

A. All who are known as cooperating physicians do.

The Court: Well, that evades the question. All the doctors in the State are not cooperating physicians?

A. Oh, definitely not; no, sir.

The Court: But in these four counties for some special reason those are all cooperating doctors, have the same status, same relationship to you?

A. That is just a happenstance. It so happens that in those four counties the existence of contract medicine has been fairly prevalent for quite a long time.

The Court: Antedates yours?

A. Oh, yes, in every instance.

The Court: Go ahead, Mr. Marcus.

Mr. Marcus:

Q. Mr. Marshall, I believe you testified this morning with respect to the number of employes OPS has in its Portland office. Could you give us an estimate of the total number of employees of OPS? A. It varies some according to the season, because we have seasonal operations, and you will have to give me a little leeway for that reason. That would run between 130 and 140.

Q. How many sales representatives? A. How
2442 many sales representatives—just a moment; I will count them. I believe it is nine or ten.

Q. And are these employes under the Fair Labor Standards Act, wages and hours, minimum wages? A. You are speaking about the revised standards that went into effect January 25, is that what you are referring to?

Q. I am not certain whether they went into effect then, but your employes are under the Federal Minimum Wages? A. Yes. But outside salesmen are exempted under that, as you doubtless know.

The Court: What kind of employes would you have that come under that; stenographers, would they come under that?

A. I believe that there are about four classes—I don't claim to know it in toto—but I believe the so-called administrative and—

The Court: I know about that. But, the stenographers, clerks?

A. They are all under it.

The Court: In what way are they under?

A. Well, minimum wage, 40 hours a week, time and a half overtime.

The Court: Do you make some returns under that Act to somebody?

A. I just can't answer whether we make returns, sir. I don't believe I know the answer to that offhand. We conform, but whether—

2443 The Court: That is a different word.

A. I can't answer that, sir; I don't know offhand.

Mr. Marcus:

Q. But you get the literature and what not from the Wages and Hours Administration, don't you? A. Only to a degree. I had to send back to Washington about the 1st of December to get a copy of the new regulations. They were not sent to us without request; no, they were not.

Q. Mr. Marshall, in a letter to you from the Coos Bay Hospital Association mention is made of the Northern Life. Can you tell us how the Northern Life enters into the prepaid medical care picture? A. Yes, I can to a degree, I believe. In this State we have a non-compulsory

workmen's compensation law which provides among other things that hazardous industries are automatically coverable, excepting that they have the right to reject at certain times and to take other types of coverage. Non-hazardous are not covered unless they apply for coverage, unless they accept. It so happens that quite a few hazardous occupations, or concerns comprising hazardous occupations, in this state have rejected the provisions of the Workmen's Compensation Law for one reason or another, which is their business, of course, and have sought coverage, you might say comparable, at least to a degree, to the State coverage, through other sources. Some have taken, oh, a number of different private insurance company contracts, some of which are exactly the same as State
2444 coverage. Some vary in different degrees. Northern Life comes into the picture by offering on those rejected firms a certain industrial protection arrangement which includes not only compensation in a form and also employers' liability, but, I believe they also usually write a certain amount of life insurance along with it; so they write a different package. Then Northern Life, and some other similar companies, under those situations frequently would like to get a hospital association to take over the industrial medical aid with what are known as industrial medical aid contracts, and some hospital associations, of course, have written such contracts.

2445 Q. Is that the Northern Life Insurance Company? A. Yes.

Q. What is its full name? A. I think it is Northern Life Insurance Company of Seattle, I believe.

Q. You have several accounts, do you not, Mr. Marshall, which are engaged in interstate commerce, like Consolidated Freightways? A. We have some accounts with their main office located in the State of Oregon who do have some employees located outside, yes. In that respect we probably do.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. You said first that you came under the Wages & Hours Act, and then later you said you conformed to it. Who told you you came under it? That is, you conformed by paying the wages and the overtime, but did anybody ever tell you if you didn't do it you would get in trouble?

A. No; but I can read the newspayers, and I read Kiplinger, and the Wall Street Journal, and various other things. I received their book of regulations, which anybody can get. And we had some of our executives go over that and we determined that we were going to conform. Nobody has ordered us to conform, no.

The Court: What do you read Kiplinger for in
2446 your business? I used to be a banker; I know.

The Witness: I would like to answer that question, your Honor, if I may.

The Court: All right.

The Witness: We like to read that so we find out what some of the Social Security people in Washington are doing about trying to put over political medicine. That is one reason.

Mr. Jaureguy:

Q. You didn't mean, then, in your answer to Mr. Marcus to be giving a considered legal opinion to him on the subject? A. Oh, I am not a lawyer. I could be wrong, but I am just stating what we do.

Q. Dr. Power that you mentioned down in Salem, how is his health? He is in pretty bad shape, isn't he, or do you know? A. Yes, I think I do know. He is a personal friend of mine and has been for many years. He frankly had some heart trouble, and I think he is attempting to get a little recuperation down in Southern California right at this present time. I just happen to know that.

Q. Now you told that Dr. Leitch sometime in the past expressed the opinion that he thought it would be a good thing for the OPS to be a monopoly. Later did he change that opinion? I mean from his expressions? A. Well, I made the statement in general prior to stating that, namely,
that I had heard no such for four or five years.
2447 That applies to Dr. Leitch the same as anybody else. And as far as my statement with regard to Dr. Leitch is concerned, that had to do with the statement of his, what I took to be his own personal, private opinion. Dr. Leitch is a gentleman who gives his personal opinion rather freely, as you know.

Q. Since then has he expressed a contrary opinion, or has he just kept still on the subject? A. Well, I guess I would have to say that he has kept still. I don't think I have heard him say one way or the other for a long time.

Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. It is true that, whether rightly or wrongly, you have considered that the employees of the OPS are under the Federal Wages, Minimum Wages Law, and Hours Law, have you not? A. We decided that we would conform after reading the regulations. We have not been informed as to whether they were required to be under or not!

Q. But it was your opinion on looking up the regulations that your employees probably did come within that law; is that not so? A. No, not necessarily so. We took pretty much the same attitude on that as we would, oh; in regard to employees' wages and working conditions, and so forth,
as applied to, shall we say, a possible union organi-
2448 zation. It is our desire to if possible equal, and maybe in some instances we have bettered it. We figure we are in the clear that way, no matter what may come in the future.

Q. I see. The same way you would assume you would be within the National Labor Relations Act, then? A. I am not assuming that. I don't know that it has been proved in the courts as to whether that is applicable to a concern doing an entirely intrastate business or whether it has to be interstate. I presume that is the point you have in mind.

Q. Yes. A. So I don't know. But we decided that we would conform on our own volition. We have not been ordered to, or anything of that kind.

Q. When you say "conform" you mean with the Fair Labor Standards Act? A. Well, we felt they were proper, and whether we were under or not didn't make any difference. We have the right to do that if we want to, I presume.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Jaureguy: I am sorry, your Honor. We don't have a witness available. We have two men that are coming, and I thought they would be here by now.

2449 The Court: Do you have some more documents?

Mr. Jaureguy: You mean that I wish to read?

The Court: You read some the other day.

Mr. Jaureguy: Yes, I have some here that I would like to read.

Exhibit 2684, which comprises three or four letters, the first dated March 14, 1936, from Industrial Hospital Association to Dr. A. E. Dodson of Medford, Oregon.

The Court: Just read what you want to call to my attention and the reporter will put it all in.

Mr. Jaureguy: Referring to a patient that Dr. Dodson had been treating, the second paragraph reads:

(Mr. Jaureguy read the second paragraph of the letter above referred to, a complete copy of which is as follows:)

Dr. A. E. Dodson, Medford, Oregon.

Dear Dr. Dodson: In reply to your letter of March 11 regarding (name of patient), we wish to advise that this patient has been given a thorough examination in Portland as well as being treated by her physician at Eugene. The condition which she has is not one of physical disability, and there are other factors in the case that are familiar to our doctors here.

It will be necessary for her to report back to 2450 Portland or to her physician at Eugene if she requires further attention as we do not care to authorize any other form of treatment outside of Eugene or Portland.

Very truly yours, Industrial Hospital Association by V. Nelson.

Mr. Jaureguy: The next one is a letter two years later by Fluhrer Bakeries, Medford, to Industrial Hospital Association, dated January 8, 1938.

(The letter above referred to, contained in Defendants' Exhibit 2684, was read to the Court by Mr. Jaureguy, and a complete copy of said letter is as follows:)

Industrial Hospital Association, 707 Medical Arts Building,
Portland, Oregon.

Gentlemen: We have had inquiries at various times from some of our employees who wish to be treated by Dr. A. E. Dodson of this city.

Inasmuch as Dr. Dodson is a reputable physician who has been here a number of years, I told these employees

that I would write your organization and ask that he be included among the physicians whom you use in this territory.

I would appreciate hearing from you on this matter.

Yours very truly, Fluhrer Bakeries By Wm. H. Fluhrer.

2451 Mr. Jaureguy: Then an answer from Industrial Hospital Association to Mr. Fluhrer of Fluhrer Bakeries of Medford, dated January 10, 1938.

(Mr. Jaureguy read the letter referred to, contained in Defendants' Exhibit 2684, a complete copy of which is as follows:)

Mr. Wm. H. Fluhrer, Fluhrer Bakeries, Medford, Oregon.

Dear Mr. Fluhrer: We have your letter of January 8 asking that we designate Dr. A. E. Dodson as one of our staff physicians in your territory.

We are unable to do this for the reason that we already have such a large staff in Medford it is not advisable to increase the same, and also for the further reason that we have had repeated requests from other doctors who wish to be added to this list and if we accept one we will not be in very good position to refuse the others.

Our experience has demonstrated to us that when we get too large a staff of doctors it is impossible to give the amount of service we are endeavoring to furnish for the fees charged. Such a statement may seem strange, and it is strange to us, but nevertheless it proves to be true in nearly every instance when we open our service to practically all the physicians in a city it is no longer possible for us to operate within the limits of our revenue from that district.

2452 Very truly yours, Industrial Hospital Ass'n, Will T. Kirk, General Manager.

The Court: Who signed that letter?

Mr. Jaureguy: That is signed by Will T. Kirk, General Manager.

The Court: What year was that?

Mr. Jaureguy: That was in January, 1938.

Then the next letter is a letter from Industrial Hospital Association to Nissen Health Institute of Medford, Oregon, dated October 4, 1938.

(Mr. Jaureguy read the letter referred to, contained in Defendants' Exhibit 2684, a complete copy of which is as follows:)

Nissen Health Institute, 15 Geneva Street, Medford, Oregon.

Gentlemen: As Dr. Dodson, who referred (name of patient) to you for treatment, is not one of our designated physicians in Medford he has not communicated with us and we have no report from him regarding this case.

We will be responsible for the expense of treatments only when they have been authorized by this office.

Very truly yours, Industrial Hospital Ass'n, Will T. Kirk, General Manager.

2453 Mr. Jaureguy: The next is Exhibit 2717, dated May 10, 1940, from the National Hospital Association to Dr. C. L. Coyle of Medford.

(Mr. Jaureguy read the letter above referred to to the Court.)

Mr. Jaureguy: Then the letter of June 14, 1940, ten days later, from the National Hospital Association to Dr. Coyle.

(The letter above referred to was read to the Court by Mr. Jaureguy, and complete copies of the four letters contained in Defendants' Exhibit 2717 are as follows:)

C. L. Coyle, M. D., Medford, Oregon

Dear Doctor: We asknowledge your letter of April 6 advising that you have an employe of the Medford Corporation who has requested hay fever treatment and you desire to know what the Association will pay before you undertake care of the case.

Since you did not give the patient's name we are unable to advise you as to any responsibility we may have for the individual's care. We also note you ask about treatment

for hay fever, but in explaining the case you refer to pollen tests and injections of serum in graduate doses. Our understanding is that these tests and injections are used as preventives rather than treatment of hay fever.

2454 The Association's contracts do not provide for preventives other than in cases where a member has been exposed to contagious disease subject to law by quarantine. If, therefore, the treatment you have in mind is preventive treatment the employe would not be eligible to it at the expense of the Association.

You also refer to an account we paid for care of (name of patient), and in reviewing our records we find this bill was paid in accordance with the usual fees and in accordance with the way it was itemized.

Very truly yours, National Hospital Association, W. J. Page, Manager, Department of Claims.

April 6, 1940

W. J. Page, National Hospital Association, Mohawk Building,
Portland, Oregon.

Sir: I am writing to inquire whether your contract with employees of the Medford Corporation includes treatment for hay fever. If so, what will you pay a physician for making the necessary tests and giving a course of treatments. Hollister Stier's diagnostic Pollen test set costs $2.50 and they will prepare a series of 30 injections of graduated doses of extracts of whatever pollens the patient is sensitive to for $10.00. I don't want to undertake to treat a patient for hay fever until I know exactly where

2455 the money is coming from and how much I'm going to get.

The last time you was in to see me on December 27th you handed me a check for $8.75 for (name of patient). My bill was $12.25. You agreed that I had been underpaid for three country calls I made on the patient, but asked me to accept the check and promised to send the rest later. No check has arrived since then. The patient paid the difference, namely $3.50, so when you get ready to make out a check for the amount you underpaid me please make it out to (name of patient).

Yours truly,

June 5, 1940

W. J. Page, Dept. of Claims, National Hospital Association,
Portland, Oregon.

Dear Sir: Your letter to me regarding treatment of a patient with hay fever left me in doubt as to whether or not the association will pay for his treatment. Since you have not positively refused to assume responsibility for the treatment I have gone ahead and made the tests. In regard to the questions you asked in your letter, the patient is (name) and he has hay fever now. Therefore, any treatment he will receive will be for the relief of his present symptoms. The hay fever season is on now and I can't see how treating a patient who already has it is prevention rather than treatment. Will your company pay for this man's treatment until the end of the season in Oct-
2456 ober or November? Please answer yes or no. You have all the facts now and here is my rock-bottom charge: $2.50 for the tests, which is the price of the set of test pollens; $10 for the pollen extracts for treatment, which is exactly what they cost me; $1 per treatment, as often as required to control the symptoms.

Yours truly,

C. L. Coyle, M. D., Medford, Oregon.

Dear Doctor: Referring again to the case of (name of patient), an employe of the Medford Corporation, to whom you wish to give hay fever shots, we have investigated the matter of these shots for treatment of the condition, and the advice we have from medical men here is that while the shots are many times effective as a prevention of hay fever the proper time to use them is before the hay fever season. We do not understand, however, that the shots are effective during the hay fever season or when the patient is suffering acutely from it. Under the circumstances the Association would not feel justified in paying for this service.

Very truly yours, National Hospital Association, W. J. Page, Manager, Department of Claims.

The Court: I am not sure that I understood that hay fever correspondence. That sounds like the Arkansas fellow that didn't put a roof on his house. He didn't
2457 need it when it was fair weather, and it was too wet to do it when it was raining.

Mr. Jaureguy: The gist of that is that they wrote and understood it was preventive, and he wrote back and said it was in the hay fever season, he was giving them the shots during the season and therefore it was not for the purpose of prevention, and the reply was that, "The Doctors tell us that it is not any good except prior to hay fever season, and therefore we are not going to pay you."

The Court: Yes, and what good would that have done? They wouldn't pay if it was given before unless it were a contagious disease.

Mr. Jaureguy: That is right. The next one is 2729, dated August 11, 1944, a memorandum from Mr. Page to Mr. Bechtold.

(Mr. Jaureguy here read Defendants' Exhibit 2729 to the Court, a complete copy of which is as follows:)

Mr. Bechtold:

Please note attached letter from (name of patient) of the Prouty Lumber Company, which refers to claim he has for services rendered by Dr. Fowler. Mr. (name of patient) states that the doctor refused to give up the x-rays. Would this not be another case on which we might receive some help from the Union.

W. J. Page.

2458 Mr. Jaureguy: The next is 2737, dated September 4, 1948. This is an answer to a letter which the Government has put in evidence which was written by Mr. Troyer N. Thompson of the Astorian Budget to the Industrial Hospital Association, so I am putting in evidence the answer from the Industrial Hospital Association to Mr. Thompson. I am just reading the first two paragraphs.

(Mr. Jaureguy here read the first two paragraphs of Defendants' Exhibit 2737, a complete copy of which is as follows:)

Mr. Troyer N. Thompson, Astoria Budget, 449 Duane Street,
Astoria, Oregon.

Dear Mr. Thompson: We appreciate very much your letter of the 1st, wherein you related your recent experience.

It is a funny thing, but in recent years, this whole boycott business has apparently begun to fall apart because of its own weight. This past year, we made a survey and found where we had made direct payment to over twelve hundred doctors and dentists and the last several months, we noticed so many new names in our remittances that we made another survey and were pleased in learning that over two hundred new doctors and dentists have begun billing us since the first of the year.

The O. P. S. is having its trouble, the same as everyone else is, with this vicious spiral of increasing costs 2459 and we have been advised that throughout pretty much of the state the doctors co-op is able to satisfy, at least satisfy them to where they will accept it, the doctors with payment at the rate of fifty cents on the dollar. We have been told that certain areas where funds had been poured in, to keep us out of the area, are also being discounted fifty per cent.

Whether or not the doctors recognize that these "Lewis type" tactics of theirs and un-American boycott are the things that will hasten the nationalization of their profession, or whether it is because of this unfortunate economic experience they are enjoying through the co-op or whatever it is, the tables seem to be turning and the doctors themselves, in many areas, are mellowing. Thus far, it has not extended to some of the nurses or office girls who have been exposed to so much O. P. S. poison and they are a little slower in swinging than the doctors are.

While we appreciated your note, we appreciated your understanding of this situation a great deal more, and trust we may conduct our affairs so as to warrant your continued support.

Upon receipt of this bill covering Dr. Rafferty's services, we will make prompt reimbursement.

Very truly yours, Industrial Hospital Association, Ray Brunkow, General Manager.

2460 Mr. Jaureguy: This is 2738, a memorandum by C. C. Bechtold dated March 13, 1939.

(Mr. Jaureguy here read Defendants' Exhibit 2738 to the Court, a complete copy of which is as follows:)

Memo Re: (Name of patient), employe of Carlton Mfg. Co.

Dr. Guy F. Via of Forest Grove phoned me Saturday, March 11th, wishing authority to remove the appendix of (name of patient), employe of the Carlton Manufacturing Company. The doctor spoke in his usual self-assuring tones. I told him that before the Association could agree to assume the expense of an operation we would have to investigate the case and that if authority was granted the doctor would have to furnish us with a report of the laboratory findings and furnish the Association with a report of the removed tissue by a recognized pathologist and suggested that he send the tissue to the Good Samaritan Hospital. Dr. Via emphatically refused, stating that they would make their own examinations. I therefore told the doctor that the Association could not assume the charges either for his service or for the hospital but that so far as the operation was concerned that was entirely between him and the patient.

C. C. Bechtold.

2461 Mr. Jaureguy: Letter of January 17, 1930, from Mr. Bechtold to Dr. Inskeep of Medford. I am reading the last portion of the last paragraph. There are just two paragraphs.

(Mr. Jaureguy read a portion of Defendants' Exhibit 2501, a complete copy of which is as follows:)

Dr. L. D. Inskeep, Medford, Oregon.

Dear Doctor: As you likely have been informed, the California-Oregon Power Company has entered into a contract with the National Hospital Association effective January 1st, extending National service to the employes of the Operating Department. It is our understanding that this will include the several divisions of the Operating Department, excepting certain employes who have elected

not to accept the service. The plan accepted is the Full Coverage Plan.

As you may recall, the Association adopted the Full Coverage Plan the first of last May, and since that time it is being generally accepted in preference to the former Standard Plan. However, there is some question arising as to our being able to continue under the Full Coverage Plan at the small increase in rate of Fifty Cents per month, and there is also a question if we will be able to increase this rate. Therefore, if we are to continue under the plan it is necessary that we have the fullest cooperation of our doctors, to the end that we are not called on to treat cases that are not properly ours, and also that unnecessary hospital cases and other expenses be avoided.

2462 You of course understand that no operation is to be performed at the expense of the Association without permission is first obtained from us. Further, any case in which there can be any question as to this Association's liability must be reported to us before any extended treatment can be furnished at our expense.

Yours very truly, National Hospital Association, C. C. Bechtold, General Manager.

2463 Mr. Jaureguy: I just have one more, your Honor, that I would like to read, a mimeographed letter that was sent out to the doctors in 1940. This is Exhibit 2683, a mimeographed letter from the National Hospital Association by C. C. Bechtold, dated March 18, 1940. This one is addressed to Dr. K. H. Martzloff:

"We take pleasure in mailing you a copy of the fee schedules that the National Hospital Association furnishes its members who hold contracts under the Association's new Medical and Hospital Security Plan. The purpose of these schedules is to acquaint the members with the fees that apply under their respective contracts, and the Association is not presuming to tell the doctor what his charge shall be; however, we believe you will find the fees fair for the particular contracts for which the respective schedules are intended.

"While the Association's responsibility is to its members, any payments made under the contracts are for the member's medical or hospital care, and the Association reserves the right of paying the hospital or the doctor direct. It is understood, however, that the Association does

not interpose in the relations between the doctor and his patient, but doctors and hospitals may render the bills direct to their Association if they desire."

(The balance of Exhibit 2683 is as follows:)

2464 "We believe that you will like these contracts and that you will find them a benefit to you and to the hospitals as well as a valuable protection to your patients who hold membership in the National Hospital Association,—particularly those whose financial circumstances do not enable them to meet the necessary needs of a serious sickness or injury.

"It is our sincere belief that this is the first time in the history of medicine that so broad a protection has been offered to the general public under any pre-paid medical or hospital plan. The National Hospital Association wishes you to have a full understanding of these contracts and will welcome your inquiries—or criticisms."

DR. ROBERT L. BENSON was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you state your name, please? A. Robert L. Benson.

Q. You are from Portland? A. That is right.

2465 Q. You are a physician and surgeon? A. Yes.

Q. How long have you been practicing? A. I came here in 1912 and was with the University of Oregon Medical School from that time on—I was licensed in 1914 for Oregon to practice medicine.

Q. Where did you get your medical education and training? A. Rush Medical College, University of Chicago.

Q. When did you finish? A. 1910.

Q. 1910? A. Yes, sir.

Q. Then you came here in— A. 1912.

Q. And you were on the faculty of the University of Oregon Medical School? A. That is right.

Q. How long were you on the faculty? A. Well, I was a Professor of Pathology from 1911 to the time I resigned in 1929.

Q. 1929? A. Yes.

Q. Were you there as a full-time professor? A. That is right, yes.

2466 Q. You have been practicing in Portland since? A. That is right. I resigned in 1929 and took up full-time practice.

Q. What is the nature of your practice? A. Internal medicine, in its specialty or sub-specialty of allergy.

Q. Do you practice alone or do you have associates? A. I have two associates.

Q. Who are they? A. Drs. Perlman and Matteri.

Q. Are you a member of any medical society? A. Several; yes, sir.

Q. Would you tell us what they are? A. The City and County Medical Society, the State Medical Society, the American Medical Association, the Portland Academy of Medicine, a Fellow of the National Academy of Medicine, a Fellow of the American Academy of Allergy, and then several others.

Q. How long have you been a member of the County and State Medical Societies? A. Since about 1915, I would say offhand.

Q. Has your membership been continuous? A. It has, yes.

Q. Have you ever been an officer of either of these societies? A. Well, I was President of the City and County Medical Society, I think, in 1937; also President of the National Society of Allergy in some year—I don't

2467 know what year it was.

The Court: Is the City and County the same as Multnomah County?

Mr. Jaureguy: Yes.

A. Multnomah County Medical Society, yes.

Q. Formerly known as the City and County Medical Society? A. City and County, formerly.

Q. Then, somewhere in there they changed the name to Multnomah County Medical Society? A. Yes.

Q. You testified you were an officer in the State Society. Have you ever been an officer of the County Medical Society? A. That was the Multnomah County—I was President of that in 1937, Multnomah County Medical Society.

Q. The State Medical Society? A. No, I have not been an officer of the State Medical Society, I think.

Q. Have you ever been on the Council of either of these societies, except ex officio as President? A. As I recall, I

was Councilor of the Multnomah County Medical Society in 1937 and 1938.

Q. These figures you are giving are the dates, and have you given them from memory; are you giving them from memory, or have you looked them up? A. I checked on it today as to that date, and that is my—that is how
2468 I arrived at that, that it was 1937 and 1938 for Councilor.

Q. Were you ever on the Board of Censors of the County Medical Society? A. Yes, I was; I think in 1936. That is close to it. I think that is right.

Q. Were you on the Board when there were certain proceedings before the Board with regard to doctors on panels of hospital associations? A. Yes, I was.

Q. During the time—during your practice have you had occasion to treat patients who were members of hospital associations?

Mr. Marcus: Your Honor,—

A. Yes.

Mr. Marcus: —I would like to make the same objection with respect to this line of questioning as made with respect to Dr. Durno.

The Court: Admitted, subject to the objection.

Mr. Jaureguy:

Q. What has been your practice and the practice of the office with regard to those patients? A. Well, we have received such patients and I have always—I have never been on any panel, as I know of, in the service of hospital associations, as you call them, but I have had patients from them. Usually the patients—I would say almost entirely the patients I see are patients who signify their intention to come to me as patients.

2469 Q. You mean, as distinguished from being sent to you by the National or Industrial? A. That is right, and I might have had some sent to me by them on occasions.

Q. What has been your practice with respect to sending the bill to the National and Industrial and accepting their check? A. Well, I think that I have had checks from them. I am sure I have—not very many. We made a practice of stating to the patients who came to the office—I did not do it but the clerical help did it—that they were responsible for any bills incurred. We have, however, as I

stated, accepted checks in part or in full at times from one or other of the hospital associations.

Q. Has your office sent bills to them, too? A. The office has sent bills to the patients, yes.

Q. To the patients? A. To the patients.

Q. Did your office send bills to the National or Industrial, do you know? A. Not that I know of. I don't see my bills sent out and I do not make them out, as a matter of fact. I have quite a big office and there is quite a big clerical staff in the office. That clerical work,—that is, the bookkeeping and sending out of bills,—is done by the accountants.

Q. How much of a staff do you have, besides the three doctors? A. Well, including two nurses, trained
2470 nurses, there are I believe ten who are not doctors.

Q. The evidence in this case shows that in the spring of 1948 you wrote letters to the National Hospital Association and Industrial Hospital Association telling them you were not going to send them bills and accept their checks but would only treat patients as private patients? A. Yes, I think it was about that time that I did so.

Q. Will you tell us how you happened to do that? A. Well, I suppose that I had overheard talk by individuals in the Medical Society to the effect that they expected their pay from the patient directly and that they did not accept checks.

I felt very kindly towards the men that I wrote to in these two associations. They were personal friends of mine.

Q. Mr. Bechtold and Chester Moore, Dr. Chester Moore? A. That is right, and so I wrote them and I was overcome through friendship by quite a flood of magnanimity towards them. I wrote quite voluminous expressions of my feeling, my personal feelings towards them. I had no feelings against them, but I did want it understood I was not on any panel.

(Recess.)

Q. Did any medical society or any officer of a medical society or any doctor ever tell you that you should not take tickets of commercial hospital associations? A. No, sir. No member or officer of any medical society has
2471 ever at any time that I can recall criticized me in that regard or brought up the subject as regarded my participation in receiving patients from these associations.

Q. Or in accepting checks or sending them bills? A. Never.

Mr. Jaureguy: Take the witness.

Cross-Examination

By Mr. Marcus:

Q. Doctor, over the course of years from 1936, you have been quite active, have you not, in both the Multnomah County Medical Society and in the State Society, is that not so? A. No, I can't say that I have. My real activity as an official in the Society, the Multnomah County Medical Society, was almost entirely confined to 1936 and 1937. Outside of that I have been a member of the Public Policy Committee for a year or so.

Q. You have been Chairman of the Policy Committee, too, of the State Society, have you not? A. That is right. That was the past year, I think.

Q. That was in 1947, wasn't it? A. 1947, yes. I think that is when I was chairman.

Q. You have referred to two letters which you wrote in the spring of 1948. I have read those letters several times to myself and I must say I was impressed by the sincerity of the man who wrote those letters.

2472 It is true, is it not, that you are as truthful in your writing as you are in your oral statements? A. I make it a special point to be truthful under oath. I have been known to tell minor mistruths when perhaps not under oath, but never under oath.

Q. Well, you are accustomed to telling mistruths even when you are not under oath? A. No, I don't make it a practice. I don't make a practice of it.

Q. Doctor, I have here the first of these letters, which is Exhibit 38, dated April 9, 1948. It is written by you to Mr. Bechtold of the National Hospital Association, and you say there:

"It has come to my attention that we physicians in this office are practicing contrary to the rulings of the City and County Medical Society, and the State Medical Society, by accepting patients from the hospital associations, and especially accepting checks. It follows then that if I am to maintain my membership in the City and County, State and National Organizations I shall have to discontinue the practice, and henceforth accept patients only on a private basis.

"I have decided therefore that, until the medical profession becomes broad enough to get along together and integrate themselves into a single group for the
2473 betterment of the health of the country, as well as of their own interests, I shall have to conform. It is not my wish to promote this division of our forces, but until a better solution is reached I shall have to accept patients only on a private basis.

"In the meantime, you have my assurance that I maintain the friendliest feelings towards yourself and the well qualified physicians and surgeons in your organization."

Then, Doctor, apparently you got a letter from Mr. Bechtold in reply to the one you sent, and you sent him another letter, which is Government's Exhibit 39, the letter being dated April 22, 1948. In that letter you say:

"In regard to my recent letter to you in connection with acceptance of patients from your association, I feel that I owe you certain clarifying details. First, let me assure you that there have been no developments in the Society recently that have any bearing on this subject. I am merely aware of the fact that the Society has for years taken a stand against the acceptance of remuneration by its members from the various hospital associations. Oddly enough, it would appear that the main fret is about the acceptance of checks from the associations.

"Let me state frankly that I have been for several
2474 years opposed to this attitude, as I have come to see that your association is in reality offering a broad choice of physicians, and is in general conducting an ethical type of practice. As you state in your letter, your organization has made it possible for its members to obtain medical help which their finances would otherwise not allow them to get. At the same time, it has reimbursed the physician fairly for his services, and has, it seems to me, promoted a high standard of medical care.

"You will gather from the above statements that I am making no complaint against your methods of practice. It seems to me that all legitimate groups in the medical profession should now aim at the high goal of promoting a better standard of medical care, making possible a prepaid plan which will be within the reach of all wage earners, combating the general federalization of medical practice, and leaving only the indigent to be fretted about by aspiring politicians. We are working toward an over-all plan.

"Until such time as the various ethical factions in medicine can come to some agreement, I find that it is going to be necessary for me to clarify my own position. The Medical Society has ruled that members may not accept remuneration from the private hospital associations. To this I shall have to conform, even though I feel
2475 that it will tend in many cases to hinder rather than to promote a free choice of physicians."

Isn't it true, Doctor, at the time you wrote these letters you were becoming aware that the members of the Society and the Society were beginning to take a stronger attitude with respect to doctors cooperating with the hospital associations than they had a little while before, is that not so? A. I am not so sure of that. I think perhaps this is one of those—by the way, this is one of those outbursts of magnanimity I referred to before recess.

However, if I may finish my answer, I think I was overconcerned. I was never told by any official of either medical society, either the Multnomah County Medical Society or the State Medical Society, about that policy, and that is why I think I was overconcerned about it. I don't know that that was the policy.

Q. But you heard more and more persons talk and more and more doctors talk about that policy of the Society at that particular time? A. I will tell you exactly what occasioned that remark, that particular remark in that letter. I am very sure that it was just talk over the lunch counter with individuals who told me that it was their practice to accept no money from the hospital associations but to insist that the patient pay the money to them directly and they could then get their remuneration from the
2476 hospital associations. I think that is the only place I could have got any such expression or attitude.

Q. Wherever you got it from, it was your feeling at that time that there was this policy and that you should conform to it, as were a number of these doctors who had talked to you over the lunch counter, or at lunch, or some other time. Isn't that so? A. Probably so, yes. I got their particular attitude on the thing and probably took it too seriously.

The Court: Is a lot of your business referred? Is a lot of your practice referred, Doctor?

A. Yes, your Honor, a great part of it.

Mr. Marcus:

Q. I believe at the same time you wrote similar letters to the other hospital associations, did you not? A. Rather similar, yes, to one other.

Q. Prior to that time you had been taking their tickets, I suppose; is that correct? A. Well, I probably had received some checks. In fact, I think I received a few checks from the hospital associations since that time. I was looking it up this forenoon and found an instance in which my office had received checks from one of these hospital associations as recently as last October, so I evidently was rather overconcerned at the time I wrote these letters two years ago nearly, as I received some checks recently and honored them.

2477 Q. I assume prior to these letters you were receiving checks? A. I think so, yes. There were some checks.

Q. I suppose for a while after you wrote these letters you did not receive checks? A. Well, I couldn't say very definitely on that, for a specific reason. I don't see any of my checks and I don't deposit them. They are deposited by my lay staff, just as my patients are usually received by them.

Q. These letters, I assume, were typed by someone of your staff, were they not? A. That is right.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. You said that Mr. Bechtold and Dr. Chester Moore are both personal friends of yours? A. Dr. Moore has been a personal friend of mine for a good many years, almost from the time I came to Portland, and Mr. Bechtold —I formed a personal acquaintance with him at the time I had his grandson, I believe it was, as a patient years ago.

Q. Are you generally as magnanimous in your letters as you were in these? If you are, I would like to have you write me some. A. It would be neeessary for you

2478 to catch me just at the right moment to get as good letters as those.

Mr. Jaureguy: That will be all. Thank you, Doctor.

(Witness excused.)

2479 DR. LOUIS P. GAMBEE was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name, please? A. Louis P. Gambee.

Q. Where do you live, Doctor? A. In Portland.

Q. Portland? A. In Portland, yes.

Q. You have been here how long? A. Twenty-six—twenty-seven years.

Q. What is your business or profession? A. I am a surgeon.

Q. You have been licensed to practice since when? A. I had reciprocity when I came here in the fall of 1923 and have practiced here since then.

Q. Would you tell us what medical schools you attended. A. I have a B. S. degree from Oregon State College, a baccalaureate degree from the University of Missouri, and I had my degree in medicine from the University of Chicago, and Rush.

Q. Did you practice before you came here? A. No, I didn't.

2480 Q. So, you have been practicing in Portland since 1923? A. That is right.

Q. As a surgeon? A. As a surgeon.

Q. Are you a member of any medical society? A. I am a member of the City and County and the State Medical Society, the American Medical Association. I am a founder of the American Board of Surgery, I am a member of the American College of Surgeons, I am a member of the Pacific Coast Surgical Society and I am also a member of the North Pacific Surgical Society, and the Portland Academy of Medicine.

Q. Would you tell us how long you have been a member of the County and State Medical Societies? A. I can only approximate the date. I think within a year or two from the time I came, I would say probably sometime in the year 1924. That would make it about twenty-five or twenty-six years.

Q. Has your membership been continuous since then? A. It has.

Q. Have you ever been an officer of either of these societies? A. I am not sure which you are referring to.

Q. The State and County Medical Societies. A. I have been on the Council of the City and County Medical Society and I have also served as a member of the Council of the State Medical Society.

2481 Q. Would you tell us about when that was? A. I am sorry; I did not expect to be asked that question. I can only approximate that answer. It seems to me it was along about the time, oh, from about 1932 for six or eight years I was on the Council of the City and County, and sometime during that interval I was on the Council for one or two years of the State Society. I am not sure what year I served my last year on either of those Councils.

Q. During your practice have you had occasion to take care of patients who are members of commercial hospital associations?

Mr. Marcus: Your Honor, I would like to object to this line of questioning on the same ground as with respect to Dr. Durno.

The Court: Admitted, subject to the objection.

Mr. Jaureguy:

Q. Have you had occasion to treat patients who are members of commercial hospital association? A. Not many, but some, throughout that period of time.

Q. Before 1940 did you take care of any of them? A. Only occasionally and that would come about in rather an inadvertent way, I believe, because doctors who, for years, have sent me their surgery cases from communities around Portland would sometimes send a patient in, in the middle of the night, as an acute surgical problem and I would care for those patients and then later discover that they were under some insurance plan.

2482 Q. But since 1940 have you had patients who were members of hospital associations? A. In about the same way.

Q. What is your practice? Do you send your bills to the hospital associations? A. I have sent my bills to the patients and then they have supplemented what the hospital associations have paid, if their fee was not adequate.

Q. Do you take any checks from hospital associations? A. Sometimes, and more often I believe they have come the other way. They have come both ways.

Q. Has any member of the Council of either Society ever suggested to you that you should not take those checks? A. No, they have not in any official way at all.

I heard it talked, of course, but I have never been reproved for my conduct in the matter in any sense.

Q. That talk you heard, is that recent or is that from the old days? A. That was more at the time when OPS was in the make, I believe, more than now.

Mr. Jaureguy: You may take the witness.

Cross-Examination

By Mr. Marcus:

Q. I did not quite get clear how you deal with patients of hospital associations. Are you saying you do not take their tickets but you do take their checks, is that it?

2483 You do take these hospital association checks? A. I have heard so much about this ticket business. Frankly, I don't recall that I have ever been presented with a ticket as a result of the major surgery that I do which is covered by a hospital association. I usually learned afterwards that they are covered by some hospital association.

Q. As far as you know, you don't take tickets? A. As far as I know, I have not, except I will make this reservation: I have striven to render service to the individual who comes to me or is sent to me, and have been much less concerned about whether he had a ticket or not than I was about whether I was capable of handling the work that was presented.

Q. I am trying to clear up something. As far as you know, you yourself, as a doctor, have never taken a hospital association ticket? A. What do you mean by taking a ticket?

Q. Well, Doctor, a number of doctors have preceded you and have testified that they knew what was meant by taking tickets, a piece of paper which is an identification, as far as the description of the hospital association is concerned; that is presented, then, to a doctor and the doctor, if he is really cooperating with the hospital association, takes that ticket and gets reimbursed or looks for reimbursement to the hospital association. A. In toto?

2484 Q. With that explanation— A. I think you are a little ambigous, as far as I can see, but I would like to be sure I understand what you understand by it.

The Court: Show him a ticket.

A. (Continuing) So I can answer your question.

The Court: Do you have a ticket there?

A. This business falls into two categories, as far as I can see. A patient who comes from the Industrial Hospital Association, for example, with a ticket has no guarantee that he will not get a bill from me over and above whatever that hospital association pays me.

Mr. Marcus:

Q. Let us not quibble about this business. A. No.

Q. I am asking you whether you take tickets? A. You tell me what you mean by taking tickets.

Q. I intend to. Who are associated with you in your practice? A. Dr. Hardwick and my brother.

Q. You know, don't you, Dr. Hardwick takes tickets but you and your brother do not, isn't that so? A. Are you sure I am not stating the truth when I say I take care of these people and send them the bill?

Q. Oh, I am not quarreling with that, if that is your statement. A. All right.

2485 Q. You take care of people and then send the people bills? That is all I am trying to find out. A. That is exactly what I am saying.

Q. You were very active, were you not, Doctor, in the days when there were active disciplinary proceedings brought against doctors who did associate themselves with these associations? A. I think I was on the Council when that project was first launched.

Q. You participated in the trial of some of these doctors, did you not? A. To the extent that I was on the

2486 Council.

Q. When you say to the extent that you were on the Council, you mean to include hearings at which certain doctors were called and tried for alleged unethical contract practices, or do you mean just because you were a member of the Council and the Council had such hearings? A. I am sorry. I am afraid I missed your question.

Q. What I am trying to get at, Doctor, is whether you played an any more active part than just being a member of the Council, or whether you were a member of the Council during a particular time when some of these doctors were actually tried before the Council? A. I think I answered that question in that I said that I was on the Council when some of these trials were being conducted. The Council was acting as a body at that time. I was not an aggressive member of the Council. Does that answer your question?

Q. I am not sure, Doctor. You see, of course during this period there were many meetings of the Council at which time no hearings were had, but there were some special meetings of the Council at which hearings were had, and it is in respect to the latter that I am asking you whether you recall ever being present at one of those hearings. A. I think I was at one.

Q. Your brother also was quite active during this period in the same way, was he not? A. Not during that same period.

2487 Q. When was he active? A. A considerable time after I became inactive.

Mr. Marcus: That is all.

Mr. Jaureguy: That will be all.

(Witness excused.)

2488 Dr. Charles P. Wilson was thereupon produced as a witness in behalf of Defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Charles P. Wilson, isn't it, Doctor? A. Yes.

Q. What is your business or profession? A. Physician.

Q. And you have been practicing for how long? A. Twenty-five years.

Q. In Portland all the time? A. Twenty-two of them.

Q. Where did you get your medical education? A. Johns Hopkins.

Q. Then where did you practice before you came here? A. Well, I presume that is stretching it. I would say twenty-five and your hospital work, four years of hospital work after that.

Q. Then you came here? A. Yes.

Q. Then you have been practicing here for twenty-five years continuously? A. No, twenty-two.

Q. Are you a member of any medical societies?

2489 A. Yes, the Multnomah County, Oregon State, The American Medical Association, the American College of Physicians, and several others.

Q. Have you ever been an officer of either the county or state societies? A. Oh, yes.

Q. What offices have you held, can you remember? A. Well, I was Vice-President—I was Secretary of the Multnomah County Medical Society for two years. I presume those years were '38 and '39 or '39 and '40. I was Vice-President in 1941 or '42, and I was President in 1948. This is the Multnomah County Medical Society. I was on the Council subsequent to that. Then I was on the Council of the Oregon State Medical Society for a number of years; about three years, perhaps.

Q. Has that been since the war, or was that before the war? A. Yes, that was since the war, in the Oregon State Medical Society.

Q. Now have you had any connection with the publication known as Northwest Medicine? A. Yes.

Q. What were you there? A. Well, I was the Editor of the Oregon section of the Northwest Medicine for a period of years.

Q. Was that before Gordon Leitch was Editor, Dr. Gordon Leitch? A. Yes. I was his predecessor.

2490 Q. Now in your capacity as Editor of the Oregon section of Northwest Medicine were you given any instructions or directions by the trustees as to opinions that you might express? A. Never.

Q. And the opinions that you expressed there, when opinions were expressed, were they your own opinions or did you purport to be setting forth the opinions of others? A. As far as I ever remember having written anything in Northwest Medicine in this section, if an opinion was expressed it was my opinion. If it was a report of what happened it would be so labeled, proceedings of the Council or something of that kind.

Q. I don't think you expressed opinions as often as was done thereafter, did you, Doctor? I mean when you wrote articles you didn't express as many opinions as your successor did? A. No, I didn't.

Q. Or have you read his articles? A. Oh, yes.

Q. Now have you had occasion to treat patients who are members of commercial hospital associations?

Mr. Marcus: I would like to object to this line of questioning on the same grounds as with respect to Dr. Durno.

The Court: Same ruling.

Mr. Jaureguy:

Q. Have you had occasion to treat patients who are members of hospital associations? A. Yes, I have had occasion to.

2491 Q. Do you know what the expression means that doctors sometimes use of "taking tickets"? A. Oh, yes. I suppose one can quibble over this subject, whether you actually take something from a patient or not. I think it is very simple. If a patient has coverage under an association the expression is you "take the patient." That means you take their ticket. People will take patients that are covered by hospital associations and not necessarily accept their ticket—accept the patient's coverage by that hospital association.

Q. Taking a ticket, as I understand it, means sending in your bill to the hospital association and accepting their check in payment of your services? Is that what that generally means? A. Yes, essentially you might say so, regardless of whether it was the Oregon Physicians' Service or National Hospital Association or Industrial, or even if it was indemnity insurance. If you take their ticket, if you receive payment from them for the service you gave them, I presume that is what is meant by taking a ticket. That is what I think of it as.

Q. Do you take tickets of those associations? A. In that sense I do not, although I will not guarantee that sometime during the war years or subsequently, or even before, that my secretary, who has been instructed not to accept payment directly from a hospital association that was unapproved by the Oregon State Medical Society—

2492 I will not guarantee that she has not done it. I don't know that there is any record of it, and I don't know whether she ever did.

Q. That practice of not taking tickets, is that the result of your own decision or is that the result of what some medical society told you? A. That is my own decision.

Q. Now since 1941, while you have been on the Council of either of those societies, has there ever been any proposal to prevent doctors from taking tickets? A. Not to my knowledge that there has been any proposal that doctors not take in the sense that I have expressed.

Q. Did there seem to be any change in the policy of medical societies along about 1941 in respect to their attitude toward hospital associations or toward doctors who work for hospital associations?

Mr. Marcus: I object to that, your Honor, because this witness is in no position to answer that question.

The Court: He may answer if he knows.

The Witness: May I have the question?

Mr. Jaureguy:

Q. Whether along sometimes in 1941 or 1942 there seemed to be any change in the policy or attitude of the medical societies with respect to doctors cooperating with hospital associations, or do you know? A. Well, yes. I know very definitely there has been a tremendous change in attitude toward all pre-payment plans of medical care. I
2493 don't know whether I am answering your question specifically, but I have no doubt you will get around to the one you want answered. Twenty years ago we didn't think much about prepaid plans of medical care.

Q. Did that include doctor-sponsored plans, too? A. Doctor-sponsored plans, too. There wasn't much thought about it. There was quite a good deal of agitation when doctors tried to establish their own policies—their own organizations. Now in twenty years time they are an accepted procedure. But there is nothing strange about this, I think. It takes a certain length of time for things to dawn on people, for attitudes to change, for concepts to change, and certainly there is nothing going to stay constant. Things that were true in 1928 and '30 on up to '35 are not going to stay the same now as they were then.

Q. You think as to these various things it takes time to change the hospital associations themselves? A. Oh, heaven's sake, yes. They change; their attitudes change.

Q. In the '30s do you remember they had their closed panel here in Portland, just a few doctors that took care of all their cases? A. Yes.

Q. Is the situation as it exists now, do you think, better from the standpoint of the public and of the doctors, with their open panel system? A. Well, indeed I do.

2494 Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Cohen:

Q. Dr. Wilson, you have testified you have been a member of the Council of the Multnomah County and also of the Oregon State Medical Society for quite a period after the war and for the period of 1940 to '43, I believe you said,

for the Multnomah County Medical Society. A. That is roughly correct, yes.

Q. You attended quite a few of the meetings? A. Practically all of them.

Q. Do you recall of the Multnomah County Medical Society ever taking any action with respect to doctors who accept tickets of these hospital associations? Were there any discussions at these meetings that you can recall? A. Well, yes, there were discussions of various types of practice and procedure and things carried out in practice.

Q. At these discussions didn't they consider it unethical for a member of the society to accept tickets from a lay-owned hospital association? A. Yes, I would consider it somewhat unethical.

Q. They never did anything about it at the Multnomah County Medical Society? They just considered it
2495 was unethical?

Mr. Jaureguy: Are you referring to any particular time, Mr. Cohen?

Mr. Cohen:

Q. Doctor, I will call your attention to a document here, No. 762, minutes of the Multnomah County Medical Society of February 6, 1940. Charles P. Wilson is among those indicated as being present.

"There was discussion concerning the fact that a number of members of the Society are engaged in unethical contract practice. It was the consensus of opinion that steps should be taken to correct this situation.

"Upon motion duly made and seconded it was voted that the Board of Censors be urged to proceed with proper disciplinary measures in connection with all members engaged in unethical practice."

Do you recall that happening at one of the Multnomah County Council meetings? A. Well, if I was there certainly I heard it. It is part of the record. I would be foolish to deny it.

Q. You also testified that you were a member of the Oregon State Medical Society Council, did you not? A. Oh, yes.

Q. Do you recall the same type of discussion at a Council meeting of the State Society? A. Well, certainly evidence of that kind one could not refute, if it is true.

2496 Just in contradiction to what you have already testified to I will call your attention to a meeting of

the Council of the Oregon State Medical Society on January 13, 1940. Among those present was Charles P. Wilson. This is Exhibit No. 343:

"Voted to recommend the adoption by the Council of the following policy with respect to ethical relationships of members in serving subscribers of unapproved hospital associations and similar organizations.

"(1) The following conduct of Physicians may be regarded by the disciplinary bodies of local medical societies as some evidence of association with unapproved organizations or organizations engaged in unethical practices:

"(a) Accepting tickets of such organizations.

"(b) Billing such organizations directly.

"(c) Accepting payments directly on the organization's fee schedule, including accepting checks from such organizations or checks of such organizations endorsed by the patient.

"(d) Rendering reports to such associations concerning conditions of the physician's patient.

"(e) Becoming one of a limited panel of physicians at the call of such organizations.

"(f) Any other conduct indicating association with such organizations."

Now Doctor, you testified—

Mr. Jaureguy: Just a moment. I want to object
2497 to the statement of counsel. That is not inconsistent with the testimony of Dr. Wilson's testimony is that since 1941 there were no such proposals, and did not say that there were not those proposals before this time.

Mr. Cohen:

Q. You testified the reason you took no tickets. Doesn't that contradict the fact it was your own decision, that you attended these Council meetings, and you are not now taking tickets? A. Is that a question?

Q. Yes, sir. A. I was not a member of the Council at this time, of course. That was when I was editor of the Oregon section of Northwest Medicine. That action is not my action.

Q. You are a cooperating physician with the Oregon Physicians' Service? A. I am.

Q. You were also chairman of the Supervisory Committee for Multnomah County, were you not? A. Yes, I was.

Q. You attended meetings of the Multnomah County Supervisory Committee as well as the OSMS and M. C. M. S. Council meetings? A. Practically all of them.

Q. And did any of these meetings have any influence upon you as to whether or not you would accept tickets?

A. In my testimony given to Mr. Jaureguy I stated
2498 that the whole concept changes as time changes. Our whole thoughts change. Now, what I think today is quite different than what I thought in 1930. It is along many different lines that I feel differently, and I will say Yes, of course, discussion is bound to make one change. You can't sit around and discuss day after day or month after month without having it have some influence on you. Obviously discussion will have an influence.

Mr. Cohen: That is all, Doctor.

Redirect Examination

By Mr. Jaureguy:

Q. Have you ever taken tickets of hospital associations? A. Not to my direct knowledge, although, I say, it would be inconceivable that a secretary sometime hasn't taken payment directly from a hospital association. It would be inconceivable to me. But they have been instructed not to do so.

Q. So if you were refraining from taking tickets before that meeting he read about, that meeting didn't cause you to quit, did it? A. No.

Mr. Jaureguy: That will be all. Thank you.

Mr. Cohen: That is all, Doctor.

(Witness excused.)

Mr. Jaureguy: Mr. Harvey, please.

2499 JOSEPH E. HARVEY, JR., was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please? A. Joseph E. Harvey, Jr.

Q. And you are the son of Joseph E. Harvey, Sr., then? A. Yes.

Q. He is a Portland attorney? A. Yes, sir.

Q. And what is your business? A. I am Assistant General Manager of Oregon Physicians' Service.

Q. And you have been that how long? A. I have been with Oregon Physicians' Service, employed by them, since October of 1942.

Q. Now, I want to ask you, if you recall, did you know Dr. Ullman? A. I am not certain whether I would recognize the gentleman at this point or not. I have a vague recollection of the man, yes, sir.

Q. I want to ask you whether after he returned from the war, do you remember talking to him after he returned from the war, did he come up to your office? A. I have a recollection of his being in our office, yes.

2500 Q. And did you tell him at that time, or did Mr. Marshall in your presence, that if he was connected with the Permanente Foundation that he could not become a cooperating physician of OPS? A. Well, Mr. Jaureguy, I don't have a sharp recollection of the conversation that went on when he was in our office. I have had occasion to talk with quite a few doctors who were perhaps interested in becoming cooperating physicians with OPS, and outside of advising them that the qualifications for membership in OPS was their eligibility for or membership in the County and/or State Medical Society. I can't recall exactly what was said at that time.

Q. But, did you ever tell any doctor that his right to become a cooperating physician of OPS was dependent on anything else except being a member of or eligible to membership in one of those societies? A. Absolutely not.

Q. Do you know whether any members of Permanente are members of OPS, or do you know anything about that? A. No, sir, I don't believe I could say.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

2501 Q. Mr. Harvey, I gather that this conversation you had with Dr. Ullman is buried among perhaps a hundred or three hundred or a thousand other conversations you have had since that time so you don't recall the particular conversation, is that right? A. Well, it wouldn't be nearly that many, Mr. Marcus.

Q. Somewhere near? A. But it is true that I have talked to a number of doctors since the war about becoming members of OPS, cooperating physicians with OPS.

Q. And you have no particular recollection of this particular conversation with Dr. Ullman, isn't that so? A. I can't state specifically what was said in that conversation, Mr. Marcus, but he came to our office to inquire about membership in OPS, and if that is the case my recollection would be that he was advised that membership in the County or State Medical Society or eligibility therefor was a prerequisite to staff membership in OPS.

Q. Well, your recollection is as to your general custom, is it not, what you generally would have said to doctors? A. That is the customary statement.

Q. As far as you know you haven't had many instances of doctors, of talking to doctors connected with Northern Permanente, have you? A. Oh, I have talked to a number of doctors that have been connected with Permanente, yes.

Q. I mean in connection with joining OPS. A.
2502 No, sir.

The Court: Didn't Ullman say that he had had a stock membership before he went to war, isn't that what he testified?

Mr. Jaureguy: Yes.

The Court: And when he came back wasn't it something about $100?

Mr. Jaureguy: I think finally when it was unscrambled, my recollection is that what he had had before the war was Multnomah Medical Service Bureau. That is my recollection of his testimony.

The Court: There was something said about him wanting to get money back.

Mr. Jaureguy: Yes, that is correct.

Mr. Marcus: He testified that he had asked to get into OPS and had been refused because he was with Northern Permanente. That is all.

The Court: Is Ullman a member of the County Medical Society?

Mr. Marcus: Yes, your Honor.

Mr. Jaureguy: He was since before he went in the Army, and is still a member, and, as he testified, is still a member.

The Court: Well, this witness or Mr. Marshall will know whether he ever had stock in OPS as he thought he had.

Mr. Jaureguy: Oh, I think it was very clear when we got

into the bottom of it, as I recall, that he left town before OPS was going and that we unscrambled it and it was Multnomah he had his stock in. He thought it was a bond, but it was stock.

2503 Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Jaureguy: We don't have any more witnesses here, your Honor.

The Court: Have you any more to read?

Mr. Jaureguy: If I looked long enough I could find some, I assure you.

The Court: I don't want to force you. Who are going to be your witnesses tomorrow?

Mr. Jaureguy: There are a couple—we have had to revise our entire list because of decision not to call some we had before. I can give you some of them, anyway. We expect to have Dr. Blair Holcomb, and Dr. Flynn if he can get here. He is a very old man from St. Helens. Dr. Miller, Robert Miller.

The Court: Where is Miller from?

Mr. Coughlin: Portland.

The Court: Portland?

Mr. Coughlin: Yes, sir.

Mr. Jaureguy: We have Dr. Hartman down here. He said he would come. He is from out of town.

The Court: What town?

Mr. Coughlin: Sweet Home.

2504 The Court: Sweet Home?

Mr. Coughlin: Yes.

Mr. Jaureguy: Then we are trying to get Dr. Fortner from Corvallis, but we haven't been able to get him.

The Court: What was in the Government's case about Benton County?

Mr. Jaureguy: Nothing. Well, I think the only thing as to Benton County is something about somebody in the Legislature, that somebody refused to take a sliver out of some man's finger when it was found out he was a member of National.

The Court: You spoke about St. Helens. One of those exhibits—the secretary was quite a wit, and he would write down at the bottom "Whatever receipts they had left were used for refreshments." Do you remember that?

Mr. Jaureguy: Yes, I remember that in some instance.

The Court: Is that the one you are going to call tomorrow?

Mr. Jaureguy: No. We are in this situation, that apparently there has been a great turnover. There aren't any doctors there who were there, excepting Dr. Flynn, before 1941.

The Court: I am glad to hear that. That will be fewer witnesses then.

Mr. Jaureguy: Yes. That will probably be our only witness from that county.

The Court: We will adjourn.

(Thereupon, at 4:00 o'clock P. M., an adjournment was taken until 10:00 o'clock A. M., the following day, February 7, 1950.)

2505 Court reconvened at 10:00 o'clock A.M., Tuesday, February 7, 1950.

Dr. Blair Holcomb was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Dr. Blair Holcomb? A. Yes, sir.

Q. Where do you live? A. Portland.

Q. How long have you lived in Oregon? A. Since 1894.

Q. What is your business or profession? A. I didn't hear you.

Q. What is your business or profession? A. I am a physician and practice internal medicine.

Q. How long have you been licensed to practice medicine? A. Since 1921.

Q. Where did you get your medical education? A. University of Oregon Medical School and Rush Medical College.

Q. You have been practicing continuously since then? A. Yes, sir.

2506 Q. Are you a member of any medical society? A. Yes.

Q. Of what societies are you a member? A. Multnomah

County Medical Society and Oregon State Medical Society, American Medical Association—

Q. How long have you been a member of those societies? A. Since I started to practice.

Q. Have you ever been an officer of any of these societies? A. Yes.

Q. Would you tell us what offices you have held? A. I was President of the Multnomah County Medical Society and I am now Speaker of the House of the Oregon State Medical Society.

Q. When were you President of the Multnomah County Medical Society? A. Oh, four or five years ago. I can't give you the exact date—during the war.

Q. As President of the Multnomah County Medical Society were you ex officio a member of the Council? A. Yes.

Q. How long were you a member of the Council? A. Of the County Society you mean?

Q. Yes. A. Well, I was a member of the Council for three years, as President-elect, as President, and as Past President.

Q. That was, you say, about three of four years
2507 ago? A. Approximately.

Q. How long have you been speaker of the House of Delegates of the State Association?—the State Society, I mean? A. I think I am on my third term, three years.

Q. During that time have there been any proposals made, either in the House of Delegates or in the Council of the Multnomah County Medical Society, to endeavor to prevent doctors from taking tickets of commercial hospital associations? A. No; absolutely no.

Q. During the time you have been practicing medicine, have you treated patients who have been members of commercial hospital associations? A. Yes.

Mr. Marcus: Your Honor, I would like to object to this line of questioning on the same grounds as with respect to Dr. Durno.

The Court: Admitted, subject to the objection.

Mr. Jaureguy:

Q. Do you understand what the expression "taking tickets" means in the medical profession? A. Yes.

Q. Do you take tickets of these commercial hospital associations? A. I never have.

Q. Would you tell us why? A. Because I have never

wished to have a third party stand between me and my patient.

2508 Q. In what respect do you think commercial hospital associations would stand between you and your patient? A. Well, when there is a third party standing between the physician and his patient, there is apt to be a tendency of the third party to dictate to the physician what should or should not be done in the way of treatment, examination, various tests, and so on; whereas, when you are dealing with a patient as an individual, as a private patient who comes to you directly as a private patient, you exercise your own judgment as to what you should do or what you should not do.

Q. Do you accept checks from the hospital associations? A. We do not. I do not.

Q. Is that for the same reason? A. For the same reason.

Q. Or for different or particular reasons? A. For the same reasons. We feel that if we are dealing directly with a patient, we are responsible to the patient and not to a third party.

Q. I would like to hand you Plaintiff's Exhibit No. 1483, regarding a case that was testified to here. I don't know particularly what you can add to it. You don't need to name the patient in your testimony.

I will ask you to give us your version of that. I may say the evidence in this case is that you treated the patient for some time and rendered him a bill and then the patient and the hospital association had an argument for six weeks or two months as to whether he was

2509 covered, and then the check came to you and you returned it to him. A. May I take just a minute to look this over?

Q. Yes. A. I recall this man because he came to us in 1949, having been referred by a doctor from Cathlamet. He came ostensibly to us as a private patient. We examined him, put him in the hospital; he was treated for diabetes and he went home.

I wrote to the doctor who referred him and gave him a report and from that time on he was under his home doctor's care. We sent the man a bill and, after several months, approximately two months, I think, we received a check for $100 from the National Hospital Association.

I wrote to the National Hospital Association and I also wrote to the patient and I stated to the hospital association that I was returning the check for $100, which was made out to Dr. Holcomb and Dr. Burns, my associate,

and I said, inasmuch as Mr. (name of patient) came to us as a private patient, we preferred to bill him directly, which we had done, and I said, "We feel in cases such as these it is up to the patient to deal with the physician directly, and in the event that an individual is protected by insurance by any association it is up to him to collect from the company which insures him." That was on July 7, 1949.

I wrote to the patient in the same way and said—
2510 I don't see a copy of the letter here, but I simply told the patient what I had done and why I had done it.

Q. I don't recall whether that $100 was your total fee or whether it was just part of it? A. I think that was our total fee, but I seem to remember vaguely that the National Hospital Association did not reimburse the man to the full extent of the fee. I am not sure, but I think that is true. Our record would show that.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Isn't it true, Doctor, that your attitude with respect to dealing with these hospital associations is the result of the Medical Society policy? A. No, I wouldn't say that.

Q. Haven't you had a good deal to do with formulating and enforcing the policies, both of the local and State Medical Society? A. Policy in regard to what?

Q. The policy with respect to contract practice of medicine, medical ethics, and dealing with hospital associations? A. No.

Q. Which of these three have you not had something to do with? A. I have never been on a Board of Censors; I have had nothing to do directly, officially, with the formulation of any policy in relation to any of those
2511 three points.

Q. You haven't had anything to do with respect to disciplinary proceedings? A. No.

Q. As a matter of fact, you are one of those who kicked Dr. Steagall and Dr. Johnston out, aren't you? A. No.

Q. You were not? I have here Exhibit 1949, which consists of the disciplinary proceedings as to Dr. John R. Steagall and A. H. Johnston before the Council of the Oregon

State Medical Society. It states: "The following officers were present: Blair Holcomb—"

Does that refresh your recollection? A. What is the date of that?

Q. I will show it to you, Doctor. A. Was this 1936?

Q. That was either 1936 or in that period. A. I thought you said 1949.

Q. No, I did not. A. May I ask that the stenographer repeat that question?

(Last question read.)

Mr. Jaureguy: Exhibit 1949.

A. Oh, Exhibit 1949. I beg your pardon?

Mr. Marcus:

Q. Are you changing your answer, then, Doctor? A. I am just looking this over, Mr. Marcus. It will
2512 take a little time. This occurred in 1936, apparently.

Q. (Mr. Marcus) Doctor, I had asked you whether at any time you had taken part in disciplinary proceedings and you said flatly "No." A. That is correct. I did say No.

Q. Are you changing your answer now? A. I thought that this information or this trial dealt with a date prior—after 1940. Isn't that correct?

Q. I am asking you specific questions, Doctor. All you have to answer are those specific questions, truthfully. A. Well, I am endeavoring to give you exact information.

Q. What is your answer now to the question as to whether or not you at any time participated in disciplinary proceedings of members of the Society? A. I don't remember this at all. I am trying to refresh my recollection by looking it over. It is possible I wasn't even on the Council when this action was taken.

Q. All I can say is that the authenticity of those documents has already been conceded by the defendants. Well, Doctor, it is true, is it not, your name appears on that document as being present? A. Yes, it does. I see that now.

Q. Could I have that, please? Doctor, I think you have been a little modest with respect to your connections with these various societies. You have been Secretary
2513 of the Oregon State Medical Society at one time, have you not? A. Right.

Q. And a member of the Council of the State Society? A. That is correct.

Q. Associate Editor of Northwest Medicine? A. That is correct.

Q. You have been a Councilor? A. Correct.

Q. Of course, you have been a member of the House of Delegates? A. Correct.

Q. You have been on committees of the Multnomah County Medical society? County Medical Society? A. Yes.

Q. You were Chairman of the Multnomah County Medical Society Committee on Medical Economics? A. That I don't know. I can't remember that.

Q. You were on that committee, though, weren't you? A. I would not be sure about that. The record would show it.

Q. You have the same trouble that some other doctors have in needing the documents to refresh their recollection? A. Do I have to answer that question?

Q. You have been on the Multnomah County Medical Society Committee on Public Relations? A. That is right.

Q. I believe you said you were President of the
2514 Multnomah County Medical Society? A. Correct.

Q. And you have been on other committees, have you not, of these societies? A. What do you mean by "other committees"?

Q. Well, I just mentioned a few committees. A. Well, I would like to have you specify what other committees you mean.

Q. I am asking you a question. If your don't know the answer, just say so, but don't fence this way. Were you on any other committees besides those I have read, committees of either of these two associations or societies? A. Will you please specify what you mean by "other committees," specify what you mean by "other committees."

Mr. Marcus: Your Honor, I request that the witness be required to answer. He knows that I mean by "other committees," committees other than the ones I read.

Q. Do you want me to read those committees again? A. It is impossible to answer your question, Mr. Marcus. What other committees—I can't remember what other committees, other than those you specified. There could have been other committees. The record will show that, but I can't say that I was on other committees.

Q. I was trying to find out whether you could recall

whether you were on other committees. If you can't
2515 recall— A. It is possible, but I can't specify what other committees.

Q. Doctor, you stated that what you did not like about these hospital associations or any of these prepaid medical care associations or organizations was that it interfered with the doctor-patient relationship? A. That is correct.

Q. In other words, you were a member of the Multnomah Industrial Health Association, were you not? A. Is that the correct name?

Q. What? A. Is that the correct name?

Q. I believe it is. A. Industrial Health Association?

Mr. Marcus: Multnomah.

Mr. Maureguy: That was the name up to a certain period and then the name was changed.

A. I see.

Mr. Marcus:

Q. I believe you said that you did not recall, during the time you have been Speaker of the House of Delegates or President of the local Medical Society, any proposals not to have doctors associate with hospitals associations? A. That is correct.

Q. Do you recall ever discussing those matters at these meetings? A. No, I don't.

2516 Q. Did they ever discuss or take any action at those meetings with respect to doctors deciding for themselves whether or not to associate themselves with prepaid medical care organizations? A. Repeat that.

(Question read.)

A. I don't recall any specific action. Of course, part of the time I was not in the meeting because we have a Vice-Speaker.

Q. You did not attend some of these meetings? A. Some of the meetings I wasn't there.

Q. At any meeting you attended do you recall whether the Society took any action with respect to preventing doctors making up their own minds as to whether or not they should deal with commercial hospital associations? A. I don't recall any.

Q. You won't deny that it may have happened? A. To my best knowledge or recollection, I don't recall any such action.